

Item I. A.

EMPIRE STATE NEW MARKET CORPORATION

Meeting of the Directors
Held at the Offices of
Empire State Development
37th Floor Conference Room
633 Third Avenue
New York, NY 10017

With videoconferencing to:

Empire State Development – Albany Offices
625 Broadway
8th Floor Conference Room
Albany, New York 12245

And:

Empire State Development – Buffalo Regional Offices
95 Perry Street
5th Floor Conference Room
Buffalo, NY 14203

October 16, 2023

MINUTES

In Attendance

Directors:

Kevin Younis, Acting Chair (Via Videoconference)
Edwin Lee
Paul Tronolone (Via Videoconference)

ESNMC Staff:

Matthew Acocella, Associate Counsel
Yvonne Cooper, Acting Corporate Secretary
Brendan Healy, Vice President
Jonevan Hornsby, President

ESD Staff:

Matthew Acocella, Associate Counsel
Sebastian Barrie, New Market Tax Credit – Program Analyst

The meeting of the Empire State New Market Corporation (“ESNMC” or the
“Corporation”) was called to order at approximately 9:31 a.m.

Acting Chair Younis noted for the record that the meeting will be webcast and the public had been given the opportunity to comment on the meeting's Agenda items by submitting their written comments before 4:30 p.m. on Friday October 13, 2021, and that no comments were received.

Acting Chair Younis then stated that the Directors had received the relevant written materials in advance of the meeting and were free to ask questions at any time.

Before beginning with the substantive portion of the meeting, Acting Chair Younis asked the Directors whether anyone had any potential conflict of interest regarding any of the items on the proposed Agenda. He asked, if so, that the appropriate disclosure be made on the record to ensure that the Director is recused from any discussion or vote regarding such item(s). No comments were noted.

Acting Chair Younis then called for a motion to approve the Minutes of the July 18, 2023 Directors' Meeting. There being no changes or corrections, upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT JULY 18, 2023 MEETING
OF THE DIRECTORS OF THE EMPIRE STATE NEW MARKET CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on July 18, 2023, as presented to this meeting, are hereby approved and all actions taken by the Directors present at such meeting as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

Next, Acting Chair Younis called on Jonevan Hornsby, President of ESNMC, to present the next item on the Agenda for the Directors' consideration.

Mr. Hornsby explained that the Directors were being asked to approve a contract amendment with RISE Community Capital, LLC to provide consulting services in connection with Empire State New Market's current allocations of federal New Market Tax Credits ("NMTC") and deployment thereof.

Mr. Hornsby further explained that RISE has been ESNMC's consultant for over 8 years and during that time has assisted in preparing NMTC allocation applications that have led to three NMTC allocation awards from the Community Development Financial Institutions fund totaling \$150 million, including back-to-back awards in 2021 and 2022.

Mr. Hornsby noted that in addition to assisting with allocation applications, RISE has assisted ESNMC with allocation deployment and the closing of transactions. With RISE's assistance, ESNMC has successfully closed 10 NMTC transactions to date and, due to this success, the original contract amount is no longer sufficient.

Mr. Hornsby further noted RISE is currently owed funds for closing a recent NMTC transaction from the 2021 award, which has led to ESNMC's most recent 2022 award. The firm will be owed additional funds for closing NMTC transactions in the future from both 2021 and 2022 awards.

Lastly, Mr. Hornsby noted that the Directors were being requested to make a determination of responsibility with respect to the contractor and authorize the Corporation to amend the contract with RISE Community Capital, LLC for an additional amount not to exceed \$1 million.

Following the full presentation, the Acting Chair called for questions or comments from the Directors. Acting Chair Younis asked for clarification regarding the current contract being extended through December 31, 2025.

Mr. Hornsby stated yes, that is correct.

Acting Chair Younis then asked if today's contract amendment is just to increase the contract amount within the current contract period.

Mr. Hornsby stated that that is correct.

Acting Chair Younis then called for any further questions or comments. Hearing none, and noting no comments were received from the public, upon motion duly made and seconded, the following Resolution was unanimously adopted:

EMPIRE STATE NEW MARKET CORPORATION – Consulting Services - Authorization to Amend a Contract with Rise Community Capital LLC to Provide Consulting Services to the Corporation and to Take Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Rise Community Capital LLC to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to amend a contract with Rise Community Capital LLC for an additional amount not to exceed one million dollars (\$1,000,000) for the purposes and services, and substantially on the terms and conditions set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation or his designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

* * *

Acting Chair Younis then called on Mr. Hornsby to present the last item on the Agenda for the Directors’ consideration.

Mr. Hornsby explained that the Directors were being asked to approve the authorization for ESNMC to execute a calendar year 2022 allocation agreement with the Community Development Financial Institutions fund.

Mr. Hornsby further explained that on September 22, 2023, ESNMC was awarded a calendar year 2022 allocation of NMTC in the amount of \$50 million that will be used to enter into an allocation agreement with the CDFI fund and close several NMTC transactions.

Following the full presentation, Acting Chair Younis called for questions or comments from the Directors. Hearing none, and noting no comments were received from the public, upon motion duly made and seconded, the following resolution was unanimously adopted:

EMPIRE STATE NEW MARKET CORPORATION – Allocation Agreement – Authorization to Execute Allocation Agreement and an Amendment thereto and to Take Related Actions

At a meeting duly called at which a quorum was present and acting throughout, the board of directors of **EMPIRE STATE NEW MARKET CORPORATION**, a New York corporation (the "Corporation"), adopted the following action for and on behalf of the Corporation:

WHEREAS, the Corporation has been certified by the Community Development Financial Institutions Fund (the "CDFI Fund") as a "qualified community development entity" (a "CDE"), as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code"), the Treasury Regulations and the related guidance, and the Corporation is expected to enter into an Allocation Agreement (the "Allocation Agreement") with the CDFI Fund in connection with a calendar year 2022 allocation of new markets tax credits under Section 45D of the Code ("NMTCs") in the amount of \$50,000,000;

WHEREAS, the Corporation has caused the formation of three (3) subsidiary CDEs, ESNMC Subsidiary CDE XIII, LLC ("CDE XIII"), ESNMC Subsidiary CDE XIV, LLC ("CDE XIV") and ESNMC Subsidiary CDE XV, LLC ("CDE XV," and together with CDE XIII and CDE XIV, individually, an "Existing Subsidiary CDE" and collectively, the "Existing Subsidiary CDEs"), and has caused or intends to cause the formation of up to ten (10) additional subsidiary CDEs (individually, a "Subsidiary CDE," and collectively, the "Subsidiary CDEs") for the purpose of receiving a sub-allocation of NMTCs from the Corporation and furthering the Corporation's purpose of serving and providing investment capital and capital assistance for, and to the benefit of, low income communities and low income persons;

WHEREAS, the Corporation serves and/or will serve as the managing member of each Existing Subsidiary CDE and each Subsidiary CDE;

WHEREAS, Statewide Local Development Corporation, a New York non-profit corporation, serves and/or will serve as a non-managing member of each Existing Subsidiary CDE and each Subsidiary CDE until such time as an investor member is admitted to each Existing Subsidiary CDE and each Subsidiary CDE;

WHEREAS, the Corporation and the Existing Subsidiary CDEs intend to execute the Allocation Agreement with the CDFI Fund and, provided the Subsidiary CDEs are certified by the CDFI Fund as CDEs, the Corporation intends to execute an amendment to the Allocation Agreement adding the Subsidiary CDEs as parties (the "Allocation Agreement Amendment");

WHEREAS, the board of directors has determined that the transactions contemplated by the Allocation Agreement and the Allocation Agreement Amendment are in the best interests of the Corporation;

NOW, THEREFORE, BE IT:

RESOLVED, that the President, Secretary, Treasurer, any Vice President, Chief Financial Officer, General Counsel or Authorized Representative (as defined below) of the Corporation (each a "Principal Officer"), each being an authorized representative of the Corporation, each Existing Subsidiary CDE and each Subsidiary CDE, be, and each of them hereby is, authorized, empowered and directed, either alone or in conjunction with any one or more of the other officers of the Corporation, to issue, execute and deliver, on behalf of the Corporation (for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs), each

Existing Subsidiary CDE and each Subsidiary CDE, the Allocation Agreement, the Allocation Agreement Amendment and any other amendments thereto adding one or more existing or to be formed subsidiary CDEs as parties (such documents are referred to herein collectively as the “Principal Documents,” and individually as a “Principal Document”), with such additional, modified or revised terms as may be acceptable to the officer executing the same, each such determination to be conclusively evidenced by his/her execution thereof and each such determination is hereby fully and completely approved and adopted as the valid action of and by the Corporation (for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs), each Existing Subsidiary CDE and each Subsidiary CDE, respectively, approved in all respects by the board of directors of the Corporation; and it is further;

RESOLVED, the Corporation in its own capacity and as managing member of the Existing Subsidiary CDEs and the Subsidiary CDEs, authorizes the Corporation, the Existing Subsidiary CDEs and the Subsidiary CDEs and each Principal Officer as an authorized representative acting on behalf of the Corporation, the Existing Subsidiary CDEs and the Subsidiary CDEs, to execute the Allocation Agreement and the Allocation Agreement Amendment, as applicable;

RESOLVED, that any Principal Officer of the Corporation be, and each of them hereby is, authorized, empowered and directed (either alone or in conjunction with any one or more of the other officers of the Corporation) to execute and deliver, on behalf of the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, all other documents, agreements and instruments (collectively, the “Other Documents”) contemplated by any Principal Document (the Principal Documents and the Other Documents (with such additional, modified or revised terms as may be acceptable to the officer executing the same, each such determination to be conclusively evidenced by his/her execution thereof and each such determination is hereby fully and completely approved and adopted as the valid action of and by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, approved in all respects by the board of directors of the Corporation) are hereinafter sometimes referred to collectively as the “Transaction Documents” and individually as a “Transaction Document”); and it is further

RESOLVED, that any Principal Officer of the Corporation be, and each of them hereby is, authorized, empowered and directed, for and on behalf of the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, to consummate the transactions contemplated by each Transaction Document, and to perform, and cause to be performed by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, the obligations contained in such Transaction Documents, as required thereunder; and it is further

RESOLVED, that any Principal Officer of the Corporation be, and each of them hereby is, authorized, empowered and directed to take any and all action necessary to effectuate the purpose and intent of the foregoing resolutions, including, without limitation, (i) the execution and delivery on behalf of the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, all such other agreements, documents and instruments, and the performance by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, thereunder, as each of them shall determine, in his/her exclusive and reasonable judgment, to be necessary, appropriate or

advisable, and (ii) the consummation of the transactions contemplated hereby and the performance by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, as required hereunder, as each of them shall determine, in his/her exclusive and reasonable judgment, to be necessary, appropriate or advisable, each such determination pursuant to the immediately preceding clauses (i) and (ii) to be conclusively evidenced by the taking of any such action by any officer of the Corporation and each such determination is hereby fully and completely approved and adopted as the valid action of and by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, approved in all respects by the board of directors of the Corporation; and it is further

RESOLVED, that the appointment of Jonevan Hornsby as “Authorized Representative” of the Corporation, the Existing Subsidiary CDEs and/or each of the Subsidiary CDEs for purposes of the Allocation Agreement, the Allocation Agreement Amendment and communications with the CDFI Fund (in such capacity, the “Authorized Representative”) is hereby fully and completely approved and adopted as the valid action of and by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, approved in all respects by the board of directors of the Corporation; and it is further

RESOLVED, that each of Riemer & Braunstein LLP, Schoeman Updike & Kaufman LLP and the CDFI Fund and its successors and assigns are hereby authorized to rely upon these resolutions, and upon any certificate of any Principal Officer of the Corporation with respect thereto until receipt of actual written notice of the revocation thereof, and may conclusively presume that the persons designated as officers or Authorized Representative of the Corporation in any certificates signed by any Principal Officer of the Corporation continue to hold office until actual receipt of a certificate from the Secretary of the Corporation to the contrary.

RESOLVED, that all acts and deeds heretofore done by any officer of the Corporation for and on behalf of the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, in entering into, executing, acknowledging or attesting any of the Transaction Documents to which the Corporation is a party or performing any of the transactions contemplated thereby or in carrying out the terms and intentions of these resolutions, are hereby ratified, approved and confirmed in all respects.

* * *

There being no further business, the meeting was adjourned at 9:38 a.m.

Respectfully submitted,

Yvonne M. Cooper
Acting Corporate Secretary

Item I. B.



FOR CONSIDERATION

December 18, 2023

TO: The Directors

FROM: Jonevan C. Hornsby

SUBJECT: Amended and Restated Bylaws

REQUEST FOR: Authorization to Adopt Amended and Restated Bylaws and to Take Related Actions

I. Summary

Approval is hereby requested for Empire State New Market Corporation ("ESNMC") to adopt certain Amended and Restated Bylaws of ESNMC and to take related actions.

II. Background

ESNMC has been certified by the Community Development Financial Institutions Fund as a "qualified community development entity", as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code"), the Treasury Regulations and the related guidance, and was awarded an allocation of \$45 million of New Markets Tax Credits ("NMTCs") in the calendar year 2021 allocation round (the "CY 2021 Allocation") and was recently awarded an allocation of \$50 million of NMTCs in the calendar year 2022 allocation round (the "CY 2022 Allocation," and together with the CY 2021 Allocation, the "NMTC Allocations"). ESNMC plans to apply for future NMTC allocations as well. In reviewing the existing bylaws for ESNMC, ESNMC staff determined that the frequency of meetings of the advisory board should be updated to be consistent with the typical advisory board meeting schedule.

Staff recommends that ESNMC adopt certain Amended and Restated Bylaws of ESNMC with respect to governance of the affairs of the Corporation. Specifically, Section 3.3 [Manner of Acting] of the Bylaws is being amended to specify that the ESNMC advisory board shall meet at least twice annually, or more frequently as needed in connection with the Corporation's activities. Further, Section 2.10 [Compensation of Directors] is being edited for clarity by removing the term "or officer," as Section 4.13 addresses the compensation of officers of the Corporation.

III. Environmental Review

The requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

IV. Requested Action

The board members are requested to authorize ESNMC to adopt the Amended and Restated Bylaws and to take related actions.

December 18, 2023

EMPIRE STATE NEW MARKET CORPORATION – Amended and Restated Bylaws – Authorization to Adopt Amended and Restated Bylaws and to Take Related Actions

At a meeting duly called at which a quorum was present and acting throughout, the Board of Directors (the “Board”) of **EMPIRE STATE NEW MARKET CORPORATION**, a New York corporation (the “Corporation”), adopted the following action for and on behalf of the Corporation:

WHEREAS, the Corporation has been certified by the Community Development Financial Institutions Fund (the “CDFI Fund”) as a “qualified community development entity” (a “CDE”), as such term is defined in the Internal Revenue Code of 1986, as amended (the “Code”), the Treasury Regulations and the related guidance, and the Corporation (i) has entered into an Allocation Agreement (the “CY 2021 Allocation Agreement”) with the CDFI Fund in connection with a calendar year (CY) 2021 allocation of new markets tax credits under Section 45D of the Code (“NMTCs”) in the amount of \$45,000,000 (the “CY 2021 Allocation”) and (ii) has entered into or will enter into an Allocation Agreement (the “CY 2022 Allocation Agreement,” and together with the CY 2021 Allocation Agreement, the “Allocation Agreements”) with the CDFI Fund in connection with a calendar year (CY) 2022 allocation of NMTCs in the amount of \$50,000,000 (the “CY 2022 Allocation,” and together with the CY 2021 Allocation, the “Allocations”);

WHEREAS, the Board of Directors wishes to adopt the Amended and Restated Bylaws of the Corporation attached here to as Exhibit A (the “Amended and Restated Bylaws”) with respect to the governance of the affairs of the Corporation;

WHEREAS, the Board of Directors has determined that the adoption of the Amended and Restated Bylaws is in the best interests of the Corporation;

NOW, THEREFORE, BE IT:

RESOLVED, that the Bylaws are hereby approved in all respects by the Board of Directors; and it is further

RESOLVED, that the President, Secretary, Treasurer, any Vice President, Chief Financial Officer or General Counsel of the Corporation (each a “Principal Officer”), are authorized, empowered and directed to take any and all action necessary to effectuate the purpose and intent of the foregoing resolutions, including, without limitation, (i) the execution and delivery on behalf of the Corporation of any agreements, documents and instruments, and the performance by the Corporation thereunder, as each of them shall determine, in his/her exclusive and reasonable judgment, to be necessary, appropriate or advisable, and (ii) the consummation of the transactions contemplated hereby and the performance by the Corporation as required hereunder, as each of them shall determine, in his/her exclusive and reasonable judgment, to be necessary, appropriate or advisable, each such determination pursuant to the immediately preceding clauses (i) and (ii) to be conclusively evidenced by the taking of any such action by any officer of the Corporation and each such determination is hereby fully and completely approved and adopted as the valid action of and by the Corporation approved in all respects by the Board of Directors; and it is further

RESOLVED, that all acts and deeds heretofore done by any officer of the Corporation for and on behalf of the Corporation in developing, implementing or approving the Amended and Restated Bylaws or performing any of the transactions contemplated thereby or in carrying out the terms and intentions of these resolutions, are hereby ratified, approved and confirmed in all respects.

* * *

Exhibit A

Amended and Restated Bylaws – Marked and Clean Versions

[Attached]

MARKED VERSION

EMPIRE STATE NEW MARKET CORPORATION

AMENDED AND RESTATED BYLAWS

~~May 12, 2011~~

December 18, 2023

ARTICLE I

SHAREHOLDERS

1.1. Sole Shareholder. The New York State Urban Development Corporation d/b/a Empire State Development ~~Corporation~~ (“~~ESDC~~ESD”), as specified in the Certificate of Incorporation of the EMPIRE STATE NEW MARKET CORPORATION (“Corporation”), is the sole shareholder (“Shareholder”) of the Corporation. As specified in the Corporation’s Certificate of Incorporation, the aggregate number of capital shares which the Corporation shall have authority to issue is one hundred (100) shares of Common Stock, of one class only, with a par value of one cent (\$0.01) per share.

1.2. Annual Meetings. The annual meeting of the Shareholders of Corporation for the election of Directors and for the transaction of such other business as may come before the meeting shall be held on the 15th day of December in each year, if not a legal holiday, and if a legal holiday, then on the next succeeding day not a legal holiday, at such time as shall be designated by the Board or the President. If the annual meeting shall not be held on the day hereinabove provided for, the Board shall call a special meeting for the election of Directors, which meeting shall be held within two (2) months after said day. At the annual meeting of the Shareholders, the President and the Treasurer of the Corporation shall present an annual report showing in appropriate detail the following information:

(a) An audited financial statement of the Corporation for the fiscal year immediately preceding the date of the report showing the assets and liabilities, principal changes in assets and liabilities, revenue, receipts, expenses and disbursements of the Corporation;

(b) A summary of the activities of the Corporation during the preceding year. The annual report shall be filed with the minutes of the annual meeting; and

(c) A copy of each annual or other periodic report or documentation required to be filed with the U.S. Secretary of the Treasury and/or to the Community Development Financial Institutions Fund, as is or may be required or necessary under the New Markets Tax Credit Program (“NMTC Program”) or otherwise in connection with the Corporation’s certification as a certified community development entity (“CDE”) under the NMTC Program.

1.3. Special Meetings. Special meetings of the Shareholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, or in his absence by any Vice President, or by a majority of the Board of Directors and shall be called at

any time by the President, or any Vice President, or the Secretary or the Treasurer, upon the request of any Shareholder entitled to vote at such meeting. Business transacted at all special meetings shall be confined to the purposes stated in the call.

1.4. Action Without a Meeting. The Shareholder may take any action which could be taken at a meeting without a meeting pursuant to provisions of the New York Business Corporation Law of the State of New York.

1.5. Notice of Meetings. Notice of the place, date and time of the holding of each annual and special meeting of the Shareholders and, in the case of a special meeting, the purpose or purposes thereof, shall be given personally or by certified mail, return receipt requested, to each Shareholder entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, and, if mailed, it shall be directed to such Shareholder at his address as it appears on the records of the Corporation, unless he shall have filed with the Secretary of the Corporation a written request that notices to him be mailed to some other address. Notice of any meeting of Shareholders shall not be required to be given to any Shareholder who shall attend such meeting in person or by proxy and shall not, at the beginning of such meeting, object to the transaction of any business because the meeting is not lawfully called or convened, or who shall, either before or after the meeting, submit a signed waiver of notice, in person or by proxy. Unless the Shareholders shall fix after the adjournment a new record date for an adjourned meeting, notice of such adjourned meeting need not be given if the time and place to which the meeting shall be adjourned were announced at the meeting at which the adjournment is taken. At the adjourned meeting, provided a quorum is present, the Shareholders may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Shareholder of record entitled to vote at the meeting.

1.6. Place of Meetings. Meetings of the Shareholders may be held at such place, within or without the State of New York, as the Board or the officer who called the meeting shall specify in the notice of such meeting, or in a duly executed waiver of notice thereof.

1.7. Quorum. The presence, in person or by proxy, of the holders of all of the issued and outstanding shares entitled to vote shall be necessary to constitute a quorum for the transaction of any business. In the absence of a quorum, the holders of a majority of the votes of the shares of stock present in person or by proxy and entitled to vote, or if no Shareholder entitled to vote is present, then any officer of the Corporation may adjourn the meeting to a time thereby established. At such adjourned meeting, provided that a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

1.8. Meeting by Conference Telephone. One or more Shareholders may participate in any meeting of the Shareholders by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. In any such case the minutes of the meeting shall indicate which Shareholders participated in the meeting by such means.

1.9. Order of Business. At each meeting of the Shareholders, the President, or in his absence or inability to act, a Vice-President, or in his absence, any person chosen by a majority of those Shareholders present, shall act as Chairman of the meeting. The Secretary, or, in his absence, any person appointed by the Chairman of the meeting, shall act as Secretary of the meeting and keep the minutes thereof. The order of business at all meetings of the Shareholders shall be as determined by the Chairman of the meeting.

1.10. Voting.

(a) Except as otherwise provided by statute or in the Certificate of Incorporation, at each meeting of Shareholders, each holder of record of shares of stock of the Corporation having voting power shall be entitled to one vote for every share of such stock standing in his name on the record of Shareholders of the Corporation, or if such record date shall not have been so fixed, then at the close of business on the day immediately preceding the day on which notice of such meeting shall be given, or if notice is waived, at the close of business on the day immediately preceding the day on which the meeting is held.

(b) Each Shareholder entitled to vote at any meeting of Shareholders may authorize another person or persons to act for him by proxy signed by such Shareholder or his attorney-in-fact. Any such proxy shall be delivered to the Secretary of such meeting at or prior to the time designated in the order of business for so delivering such proxies. No proxy shall be valid after the expiration of eleven (11) months from the date thereof, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Shareholder executing it, except in those cases where an irrevocable proxy is permitted by law.

(c) Except as otherwise provided by statute, these Amended and Restated Bylaws (the "Bylaws") or the Certificate of Incorporation, any corporate action to be taken by vote of the Shareholders shall be authorized by a majority of the total votes cast at a meeting of Shareholders where a quorum is present by the holders of shares present in person or represented by proxy and entitled to vote on such action. Unless required by statute, or determined by the Chairman of the meeting, the vote on any question need not be by written ballot. On a vote by written ballot, each ballot shall be signed by the Shareholder voting, or by his proxy, and shall state the number of shares voted.

1.11. List of Shareholders. The Secretary of the Corporation shall prepare and maintain a complete list of the Shareholders entitled to vote at meetings of the Shareholders, arranged in alphabetical order, and showing the address of each Shareholder and the number of shares registered in the name of each Shareholder. Such list shall be open to the examination of any Shareholder for any purpose germane to Shareholders' meetings, during ordinary business hours, at a place within the city where meetings are held, which place shall be specified in the notices of the meetings or at the Corporation's principal place of business. The list shall be available for inspection at the time and place of meetings during the whole time thereof.

1.12. Inspectors. In advance of any meeting of Shareholders, the Board may appoint one or more inspectors to act at such meeting or any adjournment thereof. If the inspectors are not so appointed or if any of them fails to appear or act, the Chairman of the meeting may, and on the request of any Shareholder entitled to vote thereat shall, appoint inspectors. Each inspector,

before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote, with fairness to all Shareholders. On request of the Chairman of the meeting or any Shareholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them.

1.13. Consent of Shareholders in Lieu of Meeting. Whenever the vote of Shareholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, the meeting and vote of Shareholders can be dispensed with if all of the Shareholders who would have been entitled to vote upon such action, if such meeting were held, consent in writing to such corporate action being taken.

ARTICLE II

BOARD OF DIRECTORS

2.1. Number of Directors. The Corporation shall be managed by its Board of Directors (the "Board"), which shall consist of five (5) directors, which number may be changed from time to time as determined by a vote of the all of the Shareholders at any meeting of the Shareholders; provided, that the composition of the Board of Directors shall at all times maintain compliance with the NMTC Program. All of the directors shall be of full age. Directors need not be Shareholders. Except as otherwise provided by statute or these Bylaws, the directors shall be elected at the annual meeting of the Shareholders at which a quorum is present, and the persons receiving a majority of the votes cast at such election shall be elected. Except as provided pursuant to Section 2.12 of this Article II, each director shall hold office until the next annual meeting of Shareholders and until his successor shall have been duly elected and qualified, or until his death, or until he shall have resigned, or have been removed, as hereinafter provided in these Bylaws, or as otherwise provided by statute or the Certificate of Incorporation.

2.2. Power of Board of Directors. The Board shall have the management and control of the business affairs and property of the Corporation and may exercise any and all of the powers possessed by it under its Certificate of Incorporation and By-Laws and under the laws of the State of New York as are not by statute or the Certificate of Incorporation directed or required to be exercised or done by the Shareholders. The Board shall establish all general policies governing the Corporation's operations, provided that the Board shall govern in a manner which ensures compliance with the provisions of the Corporation's Certificate of Incorporation, including compliance with Section 45D of the Internal Revenue Code and regulations promulgated thereunder relating to the NMTC Program, and of the Community Development Financial Institutions Fund as a CDE.

2.3. Chairman. The Chairman of the Board shall be designated by the Shareholder(s) on the written advice of the Governor and shall preside at all meetings of the Board. At each

meeting of the Board, the Chairman, or, in his absence or inability to act, the President, shall act as Chairman of the meeting and preside thereat. The Secretary or, in his absence or inability to act, any person appointed by the Chairman, shall act as Secretary of the meeting and keep the minutes thereof.

2.4. Meetings of the Board.

(a) First Meeting. The first meeting of each newly elected Board shall be held as soon as practicable after the adjournment of the Shareholders first meeting, at such place and time as shall be fixed by the consent in writing of all the directors.

(b) Regular Annual Meetings. Regular annual meetings of the Board may be held, except as may otherwise be provided by law, without notice to the Board, at such time and place as shall from time to time be determined by the Board. At the annual meeting of the Corporation, the President and the Treasurer of the Corporation shall present an annual report showing in appropriate detail the following information:

(1) An audited financial statement of the Corporation for the fiscal year immediately preceding the date of the report showing the assets and liabilities, principal changes in assets and liabilities, revenue, receipts, expenses and disbursements of the Corporation;

(2) A summary of the activities of the Corporation during the preceding year. The annual report shall be filed with the minutes of the annual meeting; and

(3) A copy of each annual or other periodic report or documentation required to be filed with the U.S. Secretary of the Treasury and/or to the Community Development Financial Institutions Fund, as is or may be required or necessary under the NMTC Program or otherwise in connection with the Corporation's certification as a CDE under the NMTC Program.

(c) Special Meetings. Special meetings of the Board may be called at any time by the Secretary at the request in writing of either the Chairman of the Board, the President, or one or more members of the Board. Such request shall state the purpose or purposes of the proposed meeting. Such meetings may be held at any place. Notice of each such meeting, specifying the time and place thereof, shall be given by the Secretary by causing the same to be delivered to each director at least five (5) days before the meeting or mailed to each director at least seven (7) days before the meeting. No such notice of any meeting need ~~by~~^{be} given to any director who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her or who files a written waiver of notice thereof with the Secretary, either before or after the meeting.

(d) [Reserved]

2.5. Quorum of Directors. Except as otherwise provided in the Certificate of Incorporation of the Corporation, a quorum for the transaction of business at meetings of the Board shall consist of not less than sixty percent (60%) of the total members of the Board then in office. In the absence of a quorum at any duly scheduled or duly called meeting, a majority of the

directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present, at which time any business may be transacted which might have been transacted at the meeting as originally scheduled.

2.6. Manner of Acting. Except as otherwise expressly required by statute or the Certificate of Incorporation, the act of a majority of the directors at any meeting at which a quorum is present shall be the act of the Board.

2.7. Term and Vacancies. Unless prior thereto a director resigns, dies, is removed or otherwise ceases to serve, each director shall continue to hold office until his or her successor has been elected and has qualified. Any vacancy in the Board caused by the death, resignation or removal of a director shall be filled by the Shareholders; provided, that, any vacancy so filled shall ensure that the composition of the Board shall at all times maintain compliance with the NMTC Program.

2.8. Resignations. Resignations of directors must be in writing and shall be effective upon the date of receipt thereof by the Secretary or upon an effective date specified therein, whichever date is later; provided, any such resignation shall not take effect if such resignation shall result in non-compliance with the NMTC Program relating to accountability of the Board to low income communities.

2.9. Removal of Directors. Any director may be removed at any time, with or without cause, by the Shareholder, and the vacancy caused thereby shall be filled pursuant to the provisions of Section 2.7, above.

2.10. Compensation of Directors. No director~~-or-officer~~ of the Corporation shall receive, directly or indirectly, any salary, compensation or emolument from the Corporation, except as provided by the Board; provided, that directors may be reimbursed for reasonable expenses incurred in the performance of their services as such. Serving as a director shall not preclude any director from serving the Corporation in any other capacity and receiving compensation therefor, provided the terms of such other service are on commercially reasonable terms and at arm's length. ~~[END OF ARTICLE II].~~

ARTICLE III

COMMITTEES; ADVISORY BOARDS

3.1. Executive and Other Committees; Advisory Boards. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees or advisory boards, each such committee or advisory board may include one (1) or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any such committee or advisory board, and shall replace any absent or disqualified member of any such committee or advisory board. Each advisory board shall at all times include at least twenty (20%) of its members being persons representative of low income communities within the Corporation's service area as designated in Corporation's application to the Community Development Financial Institutions Fund for certification as a CDE.

3.2. Multiple Service Areas. To the extent the Territory of the Corporation encompasses multiple service areas, the Corporation may maintain an advisory board in each such service area, each such advisory board to consist of at least one (1) or more of the directors of the Corporation and at all times at least twenty (20%) of its members shall be persons representative of low income communities in each of the local service areas within its Territory. Each advisory board shall have such duties and responsibilities as are assigned to it by the Board of Directors as to business and affairs originating in or relevant to the local service area that each such advisory board is representative of within the Territory.

3.3. Manner of Acting. The Board shall refer to its advisory board(s) any matter originating in or relevant to its service area. After a meeting(s) properly called and upon completion of review by the advisory board as to such referred matters, the decisions and resolutions adopted by the advisory board shall be referred to the Board. The advisory board shall meet ~~quarterly~~ at least twice per year or more frequently as needed in connection with the Corporation's activities. The advisory board shall also conduct, at least annually, a public community meeting before residents and business owners in the low income communities within the service area for the purpose of soliciting from such residents and businesses issues of concern within that service area. The advisory board shall review such information so gathered and refer to the Board its findings, recommendations and proposals. The advisory board shall also refer to the Board any other decision or resolution it adopts at any other meeting of the advisory board properly called for such purpose. The resolution or decision of an advisory board shall not be authorized unless it is ratified by the Board of Directors, in whole, in part or with amendment, as evidenced by appropriate resolution of the Board of Directors. Upon such ratification, such decision or resolution shall be carried out by the Board of Directors in the proper performance of such Board's duties in its management of the business and affairs of the Corporation as set forth in and consistent with the terms of these Bylaws.

3.4. Meeting by Conference Telephone. One or more members of the advisory board(s) may participate in any meeting of the advisory board(s) by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. In any such case the minutes of the meeting shall indicate which members of the advisory board(s) participated in the meeting by such means.

3.5. Minutes of Meeting. Each advisory board shall keep written minutes of its proceedings and shall report such minutes to the Board of Directors. No committee or advisory board shall have the authority to amend these Bylaws or any resolution of the Board of Directors previously adopted.

3.6. General. The Board shall have the power at any time to fill vacancies in, or to change the membership of any committee or advisory board. Nothing contained herein shall be deemed to prevent the Board from appointing one or more committees or advisory boards consisting in whole or in part of persons who are not directors of the Corporation. The President, and any member of the Board of Directors, or their designee, may attend any committee or advisory board meeting.

ARTICLE IV

OFFICERS

4.1. Number, Election and Compensation. The principal officers of the Corporation shall be the President, one or more Vice Presidents, a Secretary and a Treasurer and such other officers as may be elected by the Board of Directors from time to time. All officers of the Corporation shall be elected by the Board. Any two or more offices may be held by the same person except the offices of President and Secretary.

4.2. Term and Removal. Unless he or she resigns, dies or is removed prior thereto, each officer of the Corporation shall hold office until his or her successor has been elected and has qualified. Any person elected or appointed by the Board may be removed at any time, with or without cause, and all vacancies (however arising) may be filled at any time, in each case by the affirmative vote of the Board. Any other employee of the Corporation may be removed at any time, with or without cause, by the President or by any superior of such employee to whom the power of removal has been delegated by the President.

4.3. President. The President shall have general supervision and direction of the business of the Corporation, shall see that all orders and resolutions of the Board are carried into effect, and shall be a member of all committees appointed by the Board. The President shall have such other powers and perform such other duties as may be prescribed from time to time by the Board.

4.4. Vice Presidents. Each Vice President shall have such powers and perform such duties as may be prescribed from time to time by the Board or the President. In the absence or disability of the President, a Vice President designated by the Board shall be vested with all the powers and authority to perform all the duties of said officer.

4.5. Secretary. The Secretary shall attend all sessions of the Board and all meetings of the shareholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose. The Secretary shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the shareholders and of the Board when notice is required by these Bylaws. The Secretary shall have custody of the seal of the Corporation, and, when authorized by the Board or when any instrument requiring the corporate seal to be affixed shall first have been signed by the Chairman of the Board, the President or a Vice President, shall affix the seal to the instrument and shall attest the same by his or her signature. The Secretary shall have such other powers and perform such other duties as may be prescribed from time to time by the Board or the President.

4.6. Assistant Secretaries. Each Assistant Secretary, if one or more are appointed, shall be vested with all the powers and authorized, in the absence or disability of the Secretary to perform all the duties of the Secretary. Each Assistant Secretary shall perform such other duties as may be prescribed from time to time by the Board, the President or the Secretary.

4.7. Treasurer. The Treasurer shall be the chief financial officer of the Corporation. The Treasurer shall have custody of the corporate funds and securities of the Corporation, shall

keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation, taking proper vouchers for meetings of the Board or whenever any of them may require it, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall have such other powers and perform such other duties as may be prescribed from time to time by the Board, or the President.

4.8. Duties of Officers May be Delegated. In case of the absence of any officer of the Corporation, or for any other reason that the Board may deem sufficient, the Board may delegate, for the time being, the powers or duties, or any of them, of such officer to any other officer, or to any director.

4.9. Resignations. Any officer of the Corporation may resign at any time by giving written notice of his resignation to the Board, to the President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt. The acceptance of such resignation shall not be necessary to make it effective.

4.10. Removal. Any officer or agent of the Corporation may be removed, with cause, at any time, by the vote of the Board at any meeting of the Board. Such removal shall be without prejudice to the contractual rights, if any, of the person so removed.

4.11. Vacancies. A vacancy in any office, whether arising from death, resignation, removal or any other cause, may be filled for the unexpired portion of the term of the office in the manner prescribed by these Bylaws for the regular election or appointment of such office.

4.12. Officers' Bonds or Other Security. No officer of the Corporation, unless otherwise specified by law or by the Board of Directors, shall be required to furnish a bond or other security for the faithful performance of his duties hereunder. If such bond or security is required by the Board of Directors, it shall be in such amount and with such surety or sureties as the Board may require.

4.13. Compensation. The compensation of the officers of the Corporation for their services as such shall be fixed from time to time by the Board, but nothing contained herein shall require the Board to compensate an officer for his or her duties as such. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he is also a director of the Corporation.

ARTICLE V

CAPITAL STOCK

5.1. Stock Certificates. Each holder of stock of the Corporation shall be entitled to have a certificate, in such form as shall be approved by the Board, certifying the number of shares of stock of the Corporation owned by him. The certificates representing shares of stock shall be signed in the name of the Corporation by the President and by the Secretary, and sealed

with the seal of the Corporation (which seal may be a facsimile, engraved or printed). In case any officer who shall have signed such certificates shall have ceased to be such officer before such certificates shall be issued, they may nevertheless be issued by the Corporation with the same effect as if such officer were still in office at the date of their issue.

5.2. Books of Account and Record of Stockholders. The books and records of the Corporation may be kept at such place as the Board of Directors may from time to time determine. The stock record books and the blank stock certificate books shall be kept by the Secretary or by any other officer or agent designated by the Board of Directors.

5.3. Transfer of Shares. The transfer of shares of stock of the Corporation shall be made on the stock records of the Corporation only upon authorization by the registered holder thereof, or by his attorney, authorized by power of attorney duly executed and filed with a transfer agent or transfer clerk, and upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of all taxes thereon. Except as otherwise provided by law, the Corporation shall be entitled to recognize the exclusive right of a person in whose name any share or shares stand on the record of stockholders as the owner of such share or shares for all purposes, including, without limitation, the rights to receive dividends or other distributions, and to vote as such owner. The Corporation may hold any such stockholder of record liable for calls and assessments and the Corporation shall not be bound to recognize any equitable or legal claim to or interest in any such share or shares on the part of any other person whether or not it shall have express or other notice thereof. A stockholder shall not assign shares as security.

5.4. Regulations. The Board may make such additional rules and regulations, not inconsistent with these Bylaws, as it may deem expedient concerning the issue, transfer and registration of certificates for shares of stock of the Corporation. It may appoint, or authorize any officer or officers to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for shares of stock to bear the signature or signatures of any of them.

5.5. Lost, Destroyed or Mutilated Certificates. The holder of any certificate representing shares of stock of the Corporation shall immediately notify the Corporation of any loss, destruction or mutilation of such certificate, and the Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it which the owner thereof shall attest and verify in such form acceptable to the Board to have been lost, stolen, or destroyed or which shall have been mutilated. In such event the Board may, in its discretion, require such owner or his legal representatives to give to the Corporation a bond in such sum, limited or unlimited, and in such form and with such surety or sureties as the Board, in its absolute discretion shall determine to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft, or destruction of any such certificate, or the issuance of a new certificate.

5.6. Closing of Transfer Books, Fixing Record Dates. The Board of Directors shall have power to close the stock transfer books of the Corporation for a period not exceeding fifty (50) days preceding the date of any meeting of stockholders, the date of payment of any dividend, the date for the allotment of rights, the date when any change or conversion or exchange of

capital stock shall go into effect, or for a period not exceeding fifty (50) days in connection with obtaining the consent of stockholders for any purpose. In lieu of closing the stock transfer books as aforesaid, the Board of Directors may fix in advance a date, not exceeding fifty (50) days preceding the date of any meeting of stockholders, the date for the payment of any dividend, the date for the allotment of rights, the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent, as a record date for the determination of stockholders entitled to notice of and to vote at any such meeting, and any adjournment thereof, entitled to receive payment of any such dividend, to any such allotment of rights, to exercise the rights in respect of any such change, conversion, or exchange of capital stock, or to give such consent. In such case only, such stockholders as shall be stockholders of record on the date so fixed, shall be entitled to such notice of and to vote at such meeting, and any adjournment thereof, to receive payment of such dividend, to receive such allotment of rights, to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid.

5.7. Stock Offering. The Board of Directors may offer all or any portion of the authorized capital stock of the Corporation at any time and from time to time as it shall determine, subject to the limitations, and/or authorizations set forth in the Certificate of Incorporation.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS AND OFFICERS

6.1. General Scope of Indemnification.

(a) The provisions of this Article for indemnification shall be in addition to and shall not supplant any indemnification by the State of New York heretofore or hereafter conferred upon any Director, officer or employee by a statute, by Sections 17, 18 and 19 of the Public Officers law, or otherwise. This Article is to be construed liberally in favor of each Director, officer and employee of the Corporation to the fullest extent permitted by law, and any ambiguity, uncertainty or reasonable doubt as to facts, interpretation or legal conclusions shall be resolved in favor of such Director, officer or employee. The provisions of this Article shall inure only to the Directors, officers or employees of the Corporation or of its subsidiaries, and to their estates, shall not enlarge or diminish the rights of any other party, and shall not impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

(b) Directors, Officers and Employees. Other than as provided in Section 4.4 of these Bylaws, the Corporation shall to the fullest extent permitted by law save harmless and indemnify any person (or his or her estate) who shall have served as a director, officer or employee of the Corporation or of a subsidiary of the Corporation against financial loss or reasonable litigation expense incurred in connection with any claim, demand, suit, action or proceedings, whether civil or criminal, or the defense thereof, and arising out of (a) any transaction of the Corporation or of a subsidiary of the Corporation, or (b) any act or failure to act by any such director, officer or employee while engaged in the discharge of his or her duties on behalf of the Corporation or its subsidiaries.

6.2. Conditions Precedent and Representation of Persons Indemnified. Except in a criminal proceeding, the right to indemnification shall be conditioned on (a) the prompt delivery to the Corporation of a copy of the summons, complaint, process, notice, demand or pleading commencing any such claim, demand, suit, action or proceeding, (b) a contemporaneous offer to name counsel to the Corporation as counsel to the director, officer or employee in the defense of such claim, demand, suit, action or proceeding, and (c) the full cooperation of the director, officer or employee, in the event the offer is accepted, in the making of such defense. The Corporation may, either by its own staff counsel or by outside counsel of its choice, accept the offer and assume the representation of any person who becomes a party to the claim, demand, suit, action or proceeding, except in situations in which (a) choice of counsel is governed by statute, or (b) the Corporation's counsel determines that it is inappropriate or inadvisable for such person to be represented by counsel chosen by the Corporation. In the event the Corporation does not assume such representation, such person shall have the right to engage private counsel of his or her choice and the Corporation shall have the obligation of indemnification for the reasonable fees and expenses of such private counsel as provided in this Article and, to the extent applicable, Article Seven of the Business Corporation Law; provided, however, that the Corporation as a condition to such indemnification by the State of New York pursuant to statute shall require appropriate groups of person to be represented by the same counsel.

6.3. Advances of Expenses.

(a) Directors and Officers. A Director or officer who becomes a party to an action or proceeding may request that the Corporation advance expenses pending the final disposition of such action or proceeding. Such advancement shall be made in the manner delineated by Section 723 of the Business Corporation Law.

(b) Employees. Reasonable litigation expenses incurred by an employee who becomes a party to an action or proceeding may be paid by the Corporation from time to time pending the final disposition of such action or proceeding without necessity for any authorization, findings, or other action by the directors prior to the making of such advances; provided, however, that such advancement shall be made in the manner delineated by Section 723 of the Business Corporation Law, and that the directors (i) may make a preliminary finding at any time prior to the final disposition of such action or proceeding that it then appears that an employee has clearly not acted, in good faith, for a purpose reasonably believed to be in the best interests of the Corporation or of its subsidiaries and, in criminal actions or proceedings, in addition, that the employee clearly had not had reasonable cause to believe that his or her conduct was lawful, or may seek an opinion in writing of outside legal counsel with respect to that issue, and if such a preliminary finding shall be made or a negative opinion on the issue shall be given, no further advances under this paragraph shall be made with respect to expenses of such employee, and (ii) may determine, or provide for the determination of, the reasonableness of expenses sought to be advanced.

6.4. Directors' Liability. No director of the Corporation shall be personally liable to the Corporation or its shareholders for damages for any breach of duty as a director, unless a judgment or other final adjudication adverse to the director establishes that, in connection with any such breach of duty (i) the acts or omissions of the director were in bad faith or involved intentional misconduct or a knowing violation of law, (ii) the director personally gained in fact a

financial profit or other advantage to which the director was not legally entitled, or (iii) the acts of the director violated Section 719 of the Business Corporation Law.

ARTICLE VII

CONDUCT OF BUSINESS

7.1. Powers of Execution; Deposits.

(a) All checks and other demands for money and notes and other instruments for the payment of money shall be signed on behalf of the Corporation by such officer or officers or by such other person or persons as the Board may from time to time designate.

(b) All contracts, deeds and other instruments to which the seal of the Corporation is affixed shall be signed on behalf of the Corporation by the President, or such other person or persons as the Board may from time to time designate and shall be attested by the Secretary or an Assistant Secretary.

(c) All other contracts, deeds and instruments shall be signed on behalf of the Corporation by the President or such other person or persons as the Board or the President may from time to time designate.

(d) No loans or advances at any time to the Corporation from any bank, trust company or other institution, or from any firm, corporation or individual shall be made, executed or delivered, nor shall promissory notes, bonds or other certificates be issued in connection therewith, unless specifically authorized by the Board and shall otherwise be in such form and of such substance as is required in order to maintain compliance with the NMTC Program. No promissory notes, bonds or other certificates or evidences of indebtedness of the Corporation shall be executed or delivered unless specifically authorized by the Board. No mortgage, pledge, hypothecation or transfer of any securities or other property of the Corporation shall be given unless specifically authorized by the Board.

(e) All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may from time to time designate or as may be designated by any officer or officers of the Corporation to whom such power of designation may from time to time be delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, checks, drafts and other orders for the payment of money which are payable to the order of the Corporation may be endorsed, assigned and delivered by any officer or agent of the Corporation, or in such other manner as the Board may determine by resolution.

(f) The Board may from time to time authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may designate or as may be designated by any officer or officers of the Corporation to whom such power of designation may from time to time be delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient. The Board may authorize the

Corporation to contract with an investment advisor or other custodian to manage its investments in accordance with investment policy established by the Board.

7.2. Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words, "Corporate Seal, New York."

7.3. Fiscal Year. The fiscal year of the Corporation shall end on March 31.

ARTICLE VIII

BOOKS AND RECORDS

8.1. Maintenance of Books. There shall be kept by the Corporation (i) correct and complete books and records of account, (ii) minutes of the proceedings of the Board of Directors and its committees, (iii) minutes of the proceedings of the Shareholders, (iv) a current list of Directors and their residence addresses, (v) a current list of Shareholders and their residence addresses, (vi) a copy of the Certificate of Incorporation of the Corporation and all amendments thereto, and (vii) a copy of these Bylaws and all amendments thereto.

ARTICLE IX

AMENDMENTS

9.1. Amendments. These Bylaws may be amended, repealed or new Bylaws adopted at any annual or special meeting only by the affirmative vote of the Board, provided that a written notice shall have been sent to each member of the Board at least ten days before such annual or special meeting. Such notice shall state the alterations, amendments, additions or changes which are proposed to be made in such Bylaws. Only such changes shall be made as have been specified in the notice, and only if such changes will not result in any non-compliance with the provisions of the Corporation's Certificate of Incorporation, including compliance with Section 45D of the Internal Revenue Code and regulations promulgated thereunder relating to the new markets tax credit program, and of the Community Development Financial Institutions Fund as a CDE.

ARTICLE X

RULES AND REGULATIONS

10.1. BCL and UDC Act; NMTC Program. This Corporation is organized under and pursuant to the New York State Urban Development Corporation Act of 1968, as amended, and the Business Corporation Law of the State of New York. All functions of this Corporation are subject to the provisions of such laws and such other rules, regulations, policies, procedures and guidelines as are now or may hereafter apply to or be adopted by Corporation, including the NMTC Program rules, regulations, policies, procedures and guidelines.

CLEAN VERSION

EMPIRE STATE NEW MARKET CORPORATION

AMENDED AND RESTATED BYLAWS

December 18, 2023

ARTICLE I

SHAREHOLDERS

1.1. Sole Shareholder. The New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), as specified in the Certificate of Incorporation of the EMPIRE STATE NEW MARKET CORPORATION ("Corporation"), is the sole shareholder ("Shareholder") of the Corporation. As specified in the Corporation's Certificate of Incorporation, the aggregate number of capital shares which the Corporation shall have authority to issue is one hundred (100) shares of Common Stock, of one class only, with a par value of one cent (\$0.01) per share.

1.2. Annual Meetings. The annual meeting of the Shareholders of Corporation for the election of Directors and for the transaction of such other business as may come before the meeting shall be held on the 15th day of December in each year, if not a legal holiday, and if a legal holiday, then on the next succeeding day not a legal holiday, at such time as shall be designated by the Board or the President. If the annual meeting shall not be held on the day hereinabove provided for, the Board shall call a special meeting for the election of Directors, which meeting shall be held within two (2) months after said day. At the annual meeting of the Shareholders, the President and the Treasurer of the Corporation shall present an annual report showing in appropriate detail the following information:

(a) An audited financial statement of the Corporation for the fiscal year immediately preceding the date of the report showing the assets and liabilities, principal changes in assets and liabilities, revenue, receipts, expenses and disbursements of the Corporation;

(b) A summary of the activities of the Corporation during the preceding year. The annual report shall be filed with the minutes of the annual meeting; and

(c) A copy of each annual or other periodic report or documentation required to be filed with the U.S. Secretary of the Treasury and/or to the Community Development Financial Institutions Fund, as is or may be required or necessary under the New Markets Tax Credit Program ("NMTC Program") or otherwise in connection with the Corporation's certification as a certified community development entity ("CDE") under the NMTC Program.

1.3. Special Meetings. Special meetings of the Shareholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, or in his absence by any Vice President, or by a majority of the Board of Directors and shall be called at any time by the President, or any Vice President, or the Secretary or the Treasurer, upon the request of any

Shareholder entitled to vote at such meeting. Business transacted at all special meetings shall be confined to the purposes stated in the call.

1.4. Action Without a Meeting. The Shareholder may take any action which could be taken at a meeting without a meeting pursuant to provisions of the New York Business Corporation Law of the State of New York.

1.5. Notice of Meetings. Notice of the place, date and time of the holding of each annual and special meeting of the Shareholders and, in the case of a special meeting, the purpose or purposes thereof, shall be given personally or by certified mail, return receipt requested, to each Shareholder entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, and, if mailed, it shall be directed to such Shareholder at his address as it appears on the records of the Corporation, unless he shall have filed with the Secretary of the Corporation a written request that notices to him be mailed to some other address. Notice of any meeting of Shareholders shall not be required to be given to any Shareholder who shall attend such meeting in person or by proxy and shall not, at the beginning of such meeting, object to the transaction of any business because the meeting is not lawfully called or convened, or who shall, either before or after the meeting, submit a signed waiver of notice, in person or by proxy. Unless the Shareholders shall fix after the adjournment a new record date for an adjourned meeting, notice of such adjourned meeting need not be given if the time and place to which the meeting shall be adjourned were announced at the meeting at which the adjournment is taken. At the adjourned meeting, provided a quorum is present, the Shareholders may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Shareholder of record entitled to vote at the meeting.

1.6. Place of Meetings. Meetings of the Shareholders may be held at such place, within or without the State of New York, as the Board or the officer who called the meeting shall specify in the notice of such meeting, or in a duly executed waiver of notice thereof.

1.7. Quorum. The presence, in person or by proxy, of the holders of all of the issued and outstanding shares entitled to vote shall be necessary to constitute a quorum for the transaction of any business. In the absence of a quorum, the holders of a majority of the votes of the shares of stock present in person or by proxy and entitled to vote, or if no Shareholder entitled to vote is present, then any officer of the Corporation may adjourn the meeting to a time thereby established. At such adjourned meeting, provided that a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

1.8. Meeting by Conference Telephone. One or more Shareholders may participate in any meeting of the Shareholders by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. In any such case the minutes of the meeting shall indicate which Shareholders participated in the meeting by such means.

1.9. Order of Business. At each meeting of the Shareholders, the President, or in his absence or inability to act, a Vice-President, or in his absence, any person chosen by a majority of

those Shareholders present, shall act as Chairman of the meeting. The Secretary, or, in his absence, any person appointed by the Chairman of the meeting, shall act as Secretary of the meeting and keep the minutes thereof. The order of business at all meetings of the Shareholders shall be as determined by the Chairman of the meeting.

1.10. Voting.

(a) Except as otherwise provided by statute or in the Certificate of Incorporation, at each meeting of Shareholders, each holder of record of shares of stock of the Corporation having voting power shall be entitled to one vote for every share of such stock standing in his name on the record of Shareholders of the Corporation, or if such record date shall not have been so fixed, then at the close of business on the day immediately preceding the day on which notice of such meeting shall be given, or if notice is waived, at the close of business on the day immediately preceding the day on which the meeting is held.

(b) Each Shareholder entitled to vote at any meeting of Shareholders may authorize another person or persons to act for him by proxy signed by such Shareholder or his attorney-in-fact. Any such proxy shall be delivered to the Secretary of such meeting at or prior to the time designated in the order of business for so delivering such proxies. No proxy shall be valid after the expiration of eleven (11) months from the date thereof, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Shareholder executing it, except in those cases where an irrevocable proxy is permitted by law.

(c) Except as otherwise provided by statute, these Amended and Restated Bylaws (the "Bylaws") or the Certificate of Incorporation, any corporate action to be taken by vote of the Shareholders shall be authorized by a majority of the total votes cast at a meeting of Shareholders where a quorum is present by the holders of shares present in person or represented by proxy and entitled to vote on such action. Unless required by statute, or determined by the Chairman of the meeting, the vote on any question need not be by written ballot. On a vote by written ballot, each ballot shall be signed by the Shareholder voting, or by his proxy, and shall state the number of shares voted.

1.11. List of Shareholders. The Secretary of the Corporation shall prepare and maintain a complete list of the Shareholders entitled to vote at meetings of the Shareholders, arranged in alphabetical order, and showing the address of each Shareholder and the number of shares registered in the name of each Shareholder. Such list shall be open to the examination of any Shareholder for any purpose germane to Shareholders' meetings, during ordinary business hours, at a place within the city where meetings are held, which place shall be specified in the notices of the meetings or at the Corporation's principal place of business. The list shall be available for inspection at the time and place of meetings during the whole time thereof.

1.12. Inspectors. In advance of any meeting of Shareholders, the Board may appoint one or more inspectors to act at such meeting or any adjournment thereof. If the inspectors are not so appointed or if any of them fails to appear or act, the Chairman of the meeting may, and on the request of any Shareholder entitled to vote thereat shall, appoint inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The

inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote, with fairness to all Shareholders. On request of the Chairman of the meeting or any Shareholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them.

1.13. Consent of Shareholders in Lieu of Meeting. Whenever the vote of Shareholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, the meeting and vote of Shareholders can be dispensed with if all of the Shareholders who would have been entitled to vote upon such action, if such meeting were held, consent in writing to such corporate action being taken.

ARTICLE II

BOARD OF DIRECTORS

2.1. Number of Directors. The Corporation shall be managed by its Board of Directors (the "Board"), which shall consist of five (5) directors, which number may be changed from time to time as determined by a vote of the all of the Shareholders at any meeting of the Shareholders; provided, that the composition of the Board of Directors shall at all times maintain compliance with the NMTC Program. All of the directors shall be of full age. Directors need not be Shareholders. Except as otherwise provided by statute or these Bylaws, the directors shall be elected at the annual meeting of the Shareholders at which a quorum is present, and the persons receiving a majority of the votes cast at such election shall be elected. Except as provided pursuant to Section 2.12 of this Article II, each director shall hold office until the next annual meeting of Shareholders and until his successor shall have been duly elected and qualified, or until his death, or until he shall have resigned, or have been removed, as hereinafter provided in these Bylaws, or as otherwise provided by statute or the Certificate of Incorporation.

2.2. Power of Board of Directors. The Board shall have the management and control of the business affairs and property of the Corporation and may exercise any and all of the powers possessed by it under its Certificate of Incorporation and By-Laws and under the laws of the State of New York as are not by statute or the Certificate of Incorporation directed or required to be exercised or done by the Shareholders. The Board shall establish all general policies governing the Corporation's operations, provided that the Board shall govern in a manner which ensures compliance with the provisions of the Corporation's Certificate of Incorporation, including compliance with Section 45D of the Internal Revenue Code and regulations promulgated thereunder relating to the NMTC Program, and of the Community Development Financial Institutions Fund as a CDE.

2.3. Chairman. The Chairman of the Board shall be designated by the Shareholder(s) on the written advice of the Governor and shall preside at all meetings of the Board. At each meeting of the Board, the Chairman, or, in his absence or inability to act, the President, shall act as Chairman of the meeting and preside thereat. The Secretary or, in his absence or inability to act,

any person appointed by the Chairman, shall act as Secretary of the meeting and keep the minutes thereof.

2.4. Meetings of the Board.

(a) First Meeting. The first meeting of each newly elected Board shall be held as soon as practicable after the adjournment of the Shareholders first meeting, at such place and time as shall be fixed by the consent in writing of all the directors.

(b) Regular Annual Meetings. Regular annual meetings of the Board may be held, except as may otherwise be provided by law, without notice to the Board, at such time and place as shall from time to time be determined by the Board. At the annual meeting of the Corporation, the President and the Treasurer of the Corporation shall present an annual report showing in appropriate detail the following information:

(1) An audited financial statement of the Corporation for the fiscal year immediately preceding the date of the report showing the assets and liabilities, principal changes in assets and liabilities, revenue, receipts, expenses and disbursements of the Corporation;

(2) A summary of the activities of the Corporation during the preceding year. The annual report shall be filed with the minutes of the annual meeting; and

(3) A copy of each annual or other periodic report or documentation required to be filed with the U.S. Secretary of the Treasury and/or to the Community Development Financial Institutions Fund, as is or may be required or necessary under the NMTC Program or otherwise in connection with the Corporation's certification as a CDE under the NMTC Program.

(c) Special Meetings. Special meetings of the Board may be called at any time by the Secretary at the request in writing of either the Chairman of the Board, the President, or one or more members of the Board. Such request shall state the purpose or purposes of the proposed meeting. Such meetings may be held at any place. Notice of each such meeting, specifying the time and place thereof, shall be given by the Secretary by causing the same to be delivered to each director at least five (5) days before the meeting or mailed to each director at least seven (7) days before the meeting. No such notice of any meeting need be given to any director who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her or who files a written waiver of notice thereof with the Secretary, either before or after the meeting.

(d) [Reserved]

2.5. Quorum of Directors. Except as otherwise provided in the Certificate of Incorporation of the Corporation, a quorum for the transaction of business at meetings of the Board shall consist of not less than sixty percent (60%) of the total members of the Board then in office. In the absence of a quorum at any duly scheduled or duly called meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present, at which time any business may be transacted which might have been transacted at the meeting as originally scheduled.

2.6. Manner of Acting. Except as otherwise expressly required by statute or the Certificate of Incorporation, the act of a majority of the directors at any meeting at which a quorum is present shall be the act of the Board.

2.7. Term and Vacancies. Unless prior thereto a director resigns, dies, is removed or otherwise ceases to serve, each director shall continue to hold office until his or her successor has been elected and has qualified. Any vacancy in the Board caused by the death, resignation or removal of a director shall be filled by the Shareholders; provided, that, any vacancy so filled shall ensure that the composition of the Board shall at all times maintain compliance with the NMTC Program.

2.8. Resignations. Resignations of directors must be in writing and shall be effective upon the date of receipt thereof by the Secretary or upon an effective date specified therein, whichever date is later; provided, any such resignation shall not take effect if such resignation shall result in non-compliance with the NMTC Program relating to accountability of the Board to low income communities.

2.9. Removal of Directors. Any director may be removed at any time, with or without cause, by the Shareholder, and the vacancy caused thereby shall be filled pursuant to the provisions of Section 2.7, above.

2.10. Compensation of Directors. No director of the Corporation shall receive, directly or indirectly, any salary, compensation or emolument from the Corporation, except as provided by the Board; provided, that directors may be reimbursed for reasonable expenses incurred in the performance of their services as such. Serving as a director shall not preclude any director from serving the Corporation in any other capacity and receiving compensation therefor, provided the terms of such other service are on commercially reasonable terms and at arm's length.

ARTICLE III

COMMITTEES; ADVISORY BOARDS

3.1. Executive and Other Committees; Advisory Boards. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees or advisory boards, each such committee or advisory board may include one (1) or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any such committee or advisory board, and shall replace any absent or disqualified member of any such committee or advisory board. Each advisory board shall at all times include at least twenty (20%) of its members being persons representative of low income communities within the Corporation's service area as designated in Corporation's application to the Community Development Financial Institutions Fund for certification as a CDE.

3.2. Multiple Service Areas. To the extent the Territory of the Corporation encompasses multiple service areas, the Corporation may maintain an advisory board in each such service area, each such advisory board to consist of at least one (1) or more of the directors of the Corporation and at all times at least twenty (20%) of its members shall be persons representative of low income communities in each of the local service areas within its Territory. Each advisory board shall have

such duties and responsibilities as are assigned to it by the Board of Directors as to business and affairs originating in or relevant to the local service area that each such advisory board is representative of within the Territory.

3.3. Manner of Acting. The Board shall refer to its advisory board(s) any matter originating in or relevant to its service area. After a meeting(s) properly called and upon completion of review by the advisory board as to such referred matters, the decisions and resolutions adopted by the advisory board shall be referred to the Board. The advisory board shall meet at least twice per year or more frequently as needed in connection with the Corporation's activities. The advisory board shall also conduct, at least annually, a public community meeting before residents and business owners in the low income communities within the service area for the purpose of soliciting from such residents and businesses issues of concern within that service area. The advisory board shall review such information so gathered and refer to the Board its findings, recommendations and proposals. The advisory board shall also refer to the Board any other decision or resolution it adopts at any other meeting of the advisory board properly called for such purpose. The resolution or decision of an advisory board shall not be authorized unless it is ratified by the Board of Directors, in whole, in part or with amendment, as evidenced by appropriate resolution of the Board of Directors. Upon such ratification, such decision or resolution shall be carried out by the Board of Directors in the proper performance of such Board's duties in its management of the business and affairs of the Corporation as set forth in and consistent with the terms of these Bylaws.

3.4. Meeting by Conference Telephone. One or more members of the advisory board(s) may participate in any meeting of the advisory board(s) by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. In any such case the minutes of the meeting shall indicate which members of the advisory board(s) participated in the meeting by such means.

3.5. Minutes of Meeting. Each advisory board shall keep written minutes of its proceedings and shall report such minutes to the Board of Directors. No committee or advisory board shall have the authority to amend these Bylaws or any resolution of the Board of Directors previously adopted.

3.6. General. The Board shall have the power at any time to fill vacancies in, or to change the membership of any committee or advisory board. Nothing contained herein shall be deemed to prevent the Board from appointing one or more committees or advisory boards consisting in whole or in part of persons who are not directors of the Corporation. The President, and any member of the Board of Directors, or their designee, may attend any committee or advisory board meeting.

ARTICLE IV

OFFICERS

4.1. Number, Election and Compensation. The principal officers of the Corporation shall be the President, one or more Vice Presidents, a Secretary and a Treasurer and such other

officers as may be elected by the Board of Directors from time to time. All officers of the Corporation shall be elected by the Board. Any two or more offices may be held by the same person except the offices of President and Secretary.

4.2. Term and Removal. Unless he or she resigns, dies or is removed prior thereto, each officer of the Corporation shall hold office until his or her successor has been elected and has qualified. Any person elected or appointed by the Board may be removed at any time, with or without cause, and all vacancies (however arising) may be filled at any time, in each case by the affirmative vote of the Board. Any other employee of the Corporation may be removed at any time, with or without cause, by the President or by any superior of such employee to whom the power of removal has been delegated by the President.

4.3. President. The President shall have general supervision and direction of the business of the Corporation, shall see that all orders and resolutions of the Board are carried into effect, and shall be a member of all committees appointed by the Board. The President shall have such other powers and perform such other duties as may be prescribed from time to time by the Board.

4.4. Vice Presidents. Each Vice President shall have such powers and perform such duties as may be prescribed from time to time by the Board or the President. In the absence or disability of the President, a Vice President designated by the Board shall be vested with all the powers and authority to perform all the duties of said officer.

4.5. Secretary. The Secretary shall attend all sessions of the Board and all meetings of the shareholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose. The Secretary shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the shareholders and of the Board when notice is required by these Bylaws. The Secretary shall have custody of the seal of the Corporation, and, when authorized by the Board or when any instrument requiring the corporate seal to be affixed shall first have been signed by the Chairman of the Board, the President or a Vice President, shall affix the seal to the instrument and shall attest the same by his or her signature. The Secretary shall have such other powers and perform such other duties as may be prescribed from time to time by the Board or the President.

4.6. Assistant Secretaries. Each Assistant Secretary, if one or more are appointed, shall be vested with all the powers and authorized, in the absence or disability of the Secretary to perform all the duties of the Secretary. Each Assistant Secretary shall perform such other duties as may be prescribed from time to time by the Board, the President or the Secretary.

4.7. Treasurer. The Treasurer shall be the chief financial officer of the Corporation. The Treasurer shall have custody of the corporate funds and securities of the Corporation, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation, taking proper vouchers for meetings of the Board or whenever any of them may require it, an account of all his or her transactions as Treasurer and of the financial

condition of the Corporation. The Treasurer shall have such other powers and perform such other duties as may be prescribed from time to time by the Board, or the President.

4.8. Duties of Officers May be Delegated. In case of the absence of any officer of the Corporation, or for any other reason that the Board may deem sufficient, the Board may delegate, for the time being, the powers or duties, or any of them, of such officer to any other officer, or to any director.

4.9. Resignations. Any officer of the Corporation may resign at any time by giving written notice of his resignation to the Board, to the President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt. The acceptance of such resignation shall not be necessary to make it effective.

4.10. Removal. Any officer or agent of the Corporation may be removed, with cause, at any time, by the vote of the Board at any meeting of the Board. Such removal shall be without prejudice to the contractual rights, if any, of the person so removed.

4.11. Vacancies. A vacancy in any office, whether arising from death, resignation, removal or any other cause, may be filled for the unexpired portion of the term of the office in the manner prescribed by these Bylaws for the regular election or appointment of such office.

4.12. Officers' Bonds or Other Security. No officer of the Corporation, unless otherwise specified by law or by the Board of Directors, shall be required to furnish a bond or other security for the faithful performance of his duties hereunder. If such bond or security is required by the Board of Directors, it shall be in such amount and with such surety or sureties as the Board may require.

4.13. Compensation. The compensation of the officers of the Corporation for their services as such shall be fixed from time to time by the Board, but nothing contained herein shall require the Board to compensate an officer for his or her duties as such. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he is also a director of the Corporation.

ARTICLE V

CAPITAL STOCK

5.1. Stock Certificates. Each holder of stock of the Corporation shall be entitled to have a certificate, in such form as shall be approved by the Board, certifying the number of shares of stock of the Corporation owned by him. The certificates representing shares of stock shall be signed in the name of the Corporation by the President and by the Secretary, and sealed with the seal of the Corporation (which seal may be a facsimile, engraved or printed). In case any officer who shall have signed such certificates shall have ceased to be such officer before such certificates shall be issued, they may nevertheless be issued by the Corporation with the same effect as if such officer were still in office at the date of their issue.

5.2. Books of Account and Record of Stockholders. The books and records of the Corporation may be kept at such place as the Board of Directors may from time to time determine. The stock record books and the blank stock certificate books shall be kept by the Secretary or by any other officer or agent designated by the Board of Directors.

5.3. Transfer of Shares. The transfer of shares of stock of the Corporation shall be made on the stock records of the Corporation only upon authorization by the registered holder thereof, or by his attorney, authorized by power of attorney duly executed and filed with a transfer agent or transfer clerk, and upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of all taxes thereon. Except as otherwise provided by law, the Corporation shall be entitled to recognize the exclusive right of a person in whose name any share or shares stand on the record of stockholders as the owner of such share or shares for all purposes, including, without limitation, the rights to receive dividends or other distributions, and to vote as such owner. The Corporation may hold any such stockholder of record liable for calls and assessments and the Corporation shall not be bound to recognize any equitable or legal claim to or interest in any such share or shares on the part of any other person whether or not it shall have express or other notice thereof. A stockholder shall not assign shares as security.

5.4. Regulations. The Board may make such additional rules and regulations, not inconsistent with these Bylaws, as it may deem expedient concerning the issue, transfer and registration of certificates for shares of stock of the Corporation. It may appoint, or authorize any officer or officers to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for shares of stock to bear the signature or signatures of any of them.

5.5. Lost, Destroyed or Mutilated Certificates. The holder of any certificate representing shares of stock of the Corporation shall immediately notify the Corporation of any loss, destruction or mutilation of such certificate, and the Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it which the owner thereof shall attest and verify in such form acceptable to the Board to have been lost, stolen, or destroyed or which shall have been mutilated. In such event the Board may, in its discretion, require such owner or his legal representatives to give to the Corporation a bond in such sum, limited or unlimited, and in such form and with such surety or sureties as the Board, in its absolute discretion shall determine to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft, or destruction of any such certificate, or the issuance of a new certificate.

5.6. Closing of Transfer Books, Fixing Record Dates. The Board of Directors shall have power to close the stock transfer books of the Corporation for a period not exceeding fifty (50) days preceding the date of any meeting of stockholders, the date of payment of any dividend, the date for the allotment of rights, the date when any change or conversion or exchange of capital stock shall go into effect, or for a period not exceeding fifty (50) days in connection with obtaining the consent of stockholders for any purpose. In lieu of closing the stock transfer books as aforesaid, the Board of Directors may fix in advance a date, not exceeding fifty (50) days preceding the date of any meeting of stockholders, the date for the payment of any dividend, the date for the allotment of rights, the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent, as a record date for the determination of

stockholders entitled to notice of and to vote at any such meeting, and any adjournment thereof, entitled to receive payment of any such dividend, to any such allotment of rights, to exercise the rights in respect of any such change, conversion, or exchange of capital stock, or to give such consent. In such case only, such stockholders as shall be stockholders of record on the date so fixed, shall be entitled to such notice of and to vote at such meeting, and any adjournment thereof, to receive payment of such dividend, to receive such allotment of rights, to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid.

5.7. Stock Offering. The Board of Directors may offer all or any portion of the authorized capital stock of the Corporation at any time and from time to time as it shall determine, subject to the limitations, and/or authorizations set forth in the Certificate of Incorporation.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS AND OFFICERS

6.1. General Scope of Indemnification.

(a) The provisions of this Article for indemnification shall be in addition to and shall not supplant any indemnification by the State of New York heretofore or hereafter conferred upon any Director, officer or employee by a statute, by Sections 17, 18 and 19 of the Public Officers law, or otherwise. This Article is to be construed liberally in favor of each Director, officer and employee of the Corporation to the fullest extent permitted by law, and any ambiguity, uncertainty or reasonable doubt as to facts, interpretation or legal conclusions shall be resolved in favor of such Director, officer or employee. The provisions of this Article shall inure only to the Directors, officers or employees of the Corporation or of its subsidiaries, and to their estates, shall not enlarge or diminish the rights of any other party, and shall not impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

(b) Directors, Officers and Employees. Other than as provided in Section 4.4 of these Bylaws, the Corporation shall to the fullest extent permitted by law save harmless and indemnify any person (or his or her estate) who shall have served as a director, officer or employee of the Corporation or of a subsidiary of the Corporation against financial loss or reasonable litigation expense incurred in connection with any claim, demand, suit, action or proceedings, whether civil or criminal, or the defense thereof, and arising out of (a) any transaction of the Corporation or of a subsidiary of the Corporation, or (b) any act or failure to act by any such director, officer or employee while engaged in the discharge of his or her duties on behalf of the Corporation or its subsidiaries.

6.2. Conditions Precedent and Representation of Persons Indemnified. Except in a criminal proceeding, the right to indemnification shall be conditioned on (a) the prompt delivery to the Corporation of a copy of the summons, complaint, process, notice, demand or pleading commencing any such claim, demand, suit, action or proceeding, (b) a contemporaneous offer to name counsel to the Corporation as counsel to the director, officer or employee in the defense of such claim, demand, suit, action or proceeding, and (c) the full cooperation of the director, officer or employee, in the event the offer is accepted, in the making of such defense. The Corporation

may, either by its own staff counsel or by outside counsel of its choice, accept the offer and assume the representation of any person who becomes a party to the claim, demand, suit, action or proceeding, except in situations in which (a) choice of counsel is governed by statute, or (b) the Corporation's counsel determines that it is inappropriate or inadvisable for such person to be represented by counsel chosen by the Corporation. In the event the Corporation does not assume such representation, such person shall have the right to engage private counsel of his or her choice and the Corporation shall have the obligation of indemnification for the reasonable fees and expenses of such private counsel as provided in this Article and, to the extent applicable, Article Seven of the Business Corporation Law; provided, however, that the Corporation as a condition to such indemnification by the State of New York pursuant to statute shall require appropriate groups of person to be represented by the same counsel.

6.3. Advances of Expenses.

(a) Directors and Officers. A Director or officer who becomes a party to an action or proceeding may request that the Corporation advance expenses pending the final disposition of such action or proceeding. Such advancement shall be made in the manner delineated by Section 723 of the Business Corporation Law.

(b) Employees. Reasonable litigation expenses incurred by an employee who becomes a party to an action or proceeding may be paid by the Corporation from time to time pending the final disposition of such action or proceeding without necessity for any authorization, findings, or other action by the directors prior to the making of such advances; provided, however, that such advancement shall be made in the manner delineated by Section 723 of the Business Corporation Law, and that the directors (i) may make a preliminary finding at any time prior to the final disposition of such action or proceeding that it then appears that an employee has clearly not acted, in good faith, for a purpose reasonably believed to be in the best interests of the Corporation or of its subsidiaries and, in criminal actions or proceedings, in addition, that the employee clearly had not had reasonable cause to believe that his or her conduct was lawful, or may seek an opinion in writing of outside legal counsel with respect to that issue, and if such a preliminary finding shall be made or a negative opinion on the issue shall be given, no further advances under this paragraph shall be made with respect to expenses of such employee, and (ii) may determine, or provide for the determination of, the reasonableness of expenses sought to be advanced.

6.4. Directors' Liability. No director of the Corporation shall be personally liable to the Corporation or its shareholders for damages for any breach of duty as a director, unless a judgment or other final adjudication adverse to the director establishes that, in connection with any such breach of duty (i) the acts or omissions of the director were in bad faith or involved intentional misconduct or a knowing violation of law, (ii) the director personally gained in fact a financial profit or other advantage to which the director was not legally entitled, or (iii) the acts of the director violated Section 719 of the Business Corporation Law.

ARTICLE VII

CONDUCT OF BUSINESS

7.1. Powers of Execution; Deposits.

(a) All checks and other demands for money and notes and other instruments for the payment of money shall be signed on behalf of the Corporation by such officer or officers or by such other person or persons as the Board may from time to time designate.

(b) All contracts, deeds and other instruments to which the seal of the Corporation is affixed shall be signed on behalf of the Corporation by the President, or such other person or persons as the Board may from time to time designate and shall be attested by the Secretary or an Assistant Secretary.

(c) All other contracts, deeds and instruments shall be signed on behalf of the Corporation by the President or such other person or persons as the Board or the President may from time to time designate.

(d) No loans or advances at any time to the Corporation from any bank, trust company or other institution, or from any firm, corporation or individual shall be made, executed or delivered, nor shall promissory notes, bonds or other certificates be issued in connection therewith, unless specifically authorized by the Board and shall otherwise be in such form and of such substance as is required in order to maintain compliance with the NMTC Program. No promissory notes, bonds or other certificates or evidences of indebtedness of the Corporation shall be executed or delivered unless specifically authorized by the Board. No mortgage, pledge, hypothecation or transfer of any securities or other property of the Corporation shall be given unless specifically authorized by the Board.

(e) All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may from time to time designate or as may be designated by any officer or officers of the Corporation to whom such power of designation may from time to time be delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, checks, drafts and other orders for the payment of money which are payable to the order of the Corporation may be endorsed, assigned and delivered by any officer or agent of the Corporation, or in such other manner as the Board may determine by resolution.

(f) The Board may from time to time authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may designate or as may be designated by any officer or officers of the Corporation to whom such power of designation may from time to time be delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient. The Board may authorize the Corporation to contract with an investment advisor or other custodian to manage its investments in accordance with investment policy established by the Board.

7.2. Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words, "Corporate Seal, New York."

7.3. Fiscal Year. The fiscal year of the Corporation shall end on March 31.

ARTICLE VIII

BOOKS AND RECORDS

8.1. Maintenance of Books. There shall be kept by the Corporation (i) correct and complete books and records of account, (ii) minutes of the proceedings of the Board of Directors and its committees, (iii) minutes of the proceedings of the Shareholders, (iv) a current list of Directors and their residence addresses, (v) a current list of Shareholders and their residence addresses, (vi) a copy of the Certificate of Incorporation of the Corporation and all amendments thereto, and (vii) a copy of these Bylaws and all amendments thereto.

ARTICLE IX

AMENDMENTS

9.1. Amendments. These Bylaws may be amended, repealed or new Bylaws adopted at any annual or special meeting only by the affirmative vote of the Board, provided that a written notice shall have been sent to each member of the Board at least ten days before such annual or special meeting. Such notice shall state the alterations, amendments, additions or changes which are proposed to be made in such Bylaws. Only such changes shall be made as have been specified in the notice, and only if such changes will not result in any non-compliance with the provisions of the Corporation's Certificate of Incorporation, including compliance with Section 45D of the Internal Revenue Code and regulations promulgated thereunder relating to the new markets tax credit program, and of the Community Development Financial Institutions Fund as a CDE.

ARTICLE X

RULES AND REGULATIONS

10.1. BCL and UDC Act; NMTC Program. This Corporation is organized under and pursuant to the New York State Urban Development Corporation Act of 1968, as amended, and the Business Corporation Law of the State of New York. All functions of this Corporation are subject to the provisions of such laws and such other rules, regulations, policies, procedures and guidelines as are now or may hereafter apply to or be adopted by Corporation, including the NMTC Program rules, regulations, policies, procedures and guidelines.

Item I. C.



FOR CONSIDERATION

December 18, 2023

TO: The Directors

FROM: Jonevan C. Hornsby

SUBJECT: New Markets Tax Credit Allocation Application

REQUEST FOR: Authorization to Sign and File a Calendar Year 2023 NMTC Allocation Application; and to Take Related Actions

I. Background

Empire State New Market Corporation ("ESNMC" or the "Corporation") was incorporated in 2004 for the purpose of applying for an allocation of New Markets Tax Credits ("NMTCs") from the Community Development Financial Institutions ("CDFI") Fund of the U.S. Department of Treasury.

ESNMC received its first allocation of NMTCs in 2009 in the amount of \$30 million. All of this initial allocation was deployed into NMTC projects for Chobani (formerly known as Agro-Farma) and the Brooklyn Navy Yard Development Corporation. In 2016, ESNMC received a second allocation in the amount of \$55 million. ESNMC used all of that allocation in connection with the National Comedy Center, SUNY Broome Culinary Arts Center, Hornell Medical Center, Boys and Girls Club of Schenectady, 37 Chandler Street, Thin Man Brewery, Currier Plastics, the Chautauqua Center, and ALDI NMTC projects. In 2022, ESNMC received a third allocation in the amount of \$45 million that it is deploying consistent with that related NMTC application and allocation agreement with the CDFI Fund. So far, ESNMC has closed a project for the GLOW YMCA with that allocation. In September 2023, ESNMC received a fourth allocation in the amount of \$50 million. ESNMC continues to service the closed transactions that are still outstanding.

ESNMC intends to apply for a new fifth allocation of NMTCs from the CDFI Fund and submit its allocation application to the CDFI Fund requesting a calendar year (CY) 2023 round allocation of up to \$63 million on or before December 19, 2023. The application reflects ESNMC's strategy, past successful projects, potential future projects, ongoing management capacity, and other related ESNMC experience to enhance its qualifications to obtain a new allocation of NMTCs. ESNMC staff has worked closely with ESNMC's NMTC consultant, Rise Community Capital, to prepare the application.

II. Environmental Review

Empire State Development staff, on behalf of the ESNMC, has determined that the requested authorization to sign and file a CY 2023 NMTC allocation application does not constitute an action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization.

III. Requested Action

The Directors are requested to approve the authorization to sign and file a CY 2023 NMTC allocation application, and direct and authorize Jonevan Hornsby, as the Authorized Representative of ESNMC, to act in connection with the allocation application and to provide such additional information as may be required.

Attachments
Resolution

December 18, 2023

EMPIRE STATE NEW MARKET CORPORATION – New Markets Tax Credit Allocation Application –
Authorization to Sign and File a Calendar Year 2023 New Market Tax Credit Allocation
Application; and to Take Related Actions

RESOLVED, that the Corporation is authorized to sign and file a calendar year 2023 New Market Tax Credit allocation application on substantially the terms and for the purposes set forth in the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, with such changes as the President or his designee(s) may deem appropriate. Any actions previously taken by the Corporation in furtherance of the actions authorized herein are hereby ratified and approved.

* * *

Item I. D.

FOR CONSIDERATION

December 18, 2023

TO: The Directors

FROM: Jonevan C. Hornsby

SUBJECT: Procedures for Financial Diligence, Analysis and Considerations

REQUEST FOR: Authorization to Adopt Procedures for Financial Diligence, Analysis and Considerations and to Take Related Actions

I. Summary

Approval is hereby requested for Empire State New Market Corporation ("ESNMC") to adopt certain Procedures for Financial Diligence, Analysis and Considerations and to take related actions.

II. Background

ESNMC was awarded an allocation of \$45 million of New Markets Tax Credits ("NMTCs") in the calendar year 2021 allocation round (the "CY 2021 Allocation") and was recently awarded an allocation of \$50 million of NMTCs in the calendar year 2022 allocation round (the "CY 2022 Allocation," and together with the CY 2021 Allocation, the "NMTC Allocations"). With its NMTC Allocations, ESNMC intends to review, select and close on the financing for several NMTC projects. Staff recommends that ESNMC adopt certain Procedures for Financial Diligence, Analysis and Considerations to be implemented in connection with the review and selection of the NMTC projects that will be financed with the proceeds of qualified equity investments received by subsidiary allocatees of ESNMC with respect to the NMTC Allocations as well as future NMTC allocations.

III. Environmental Review

The requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

IV. Requested Action

The board members are requested to authorize ESNMC to adopt certain Procedures for Financial Diligence, Analysis and Considerations ("Procedures") and to take related actions. These Procedures are being promulgated and recommended for adoption in response to recent guidance issued by the U.S. Department of the Treasury Community Development Financial Institution (CDFI) Fund.

V. Attachments

Resolution
Exhibit A

EMPIRE STATE NEW MARKET CORPORATION – Authorization to Adopt Procedures for Financial Diligence, Analysis and Considerations and to Take Related Actions

At a meeting duly called at which a quorum was present and acting throughout, the Board of Directors (the “Board”) of **EMPIRE STATE NEW MARKET CORPORATION**, a New York corporation (the “Corporation”), adopted the following action for and on behalf of the Corporation:

WHEREAS, the Corporation has been certified by the Community Development Financial Institutions Fund (the “CDFI Fund”) as a “qualified community development entity” (a “CDE”), as such term is defined in the Internal Revenue Code of 1986, as amended (the “Code”), the Treasury Regulations and the related guidance, and the Corporation (i) has entered into an Allocation Agreement (the “CY 2021 Allocation Agreement”) with the CDFI Fund in connection with a calendar year (CY) 2021 allocation of new markets tax credits under Section 45D of the Code (“NMTCs”) in the amount of \$45,000,000 (the “CY 2021 Allocation”) and (ii) has entered into or will enter into an Allocation Agreement (the “CY 2022 Allocation Agreement,” and together with the CY 2021 Allocation Agreement, the “Allocation Agreements”) with the CDFI Fund in connection with a calendar year (CY) 2022 allocation of NMTCs in the amount of \$50,000,000 (the “CY 2022 Allocation,” and together with the CY 2021 Allocation, the “Allocations”);

WHEREAS, the Board of Directors wishes to adopt the Procedures for Financial Diligence, Analysis and Considerations attached here to as Exhibit A with respect to the use of proceeds of “qualified equity investments” (as such term is defined in the Code) received by subsidiary allocatees of the Corporation in connection with the Allocations and other allocations of NMTCs (the “Underwriting Procedures”);

WHEREAS, the Board of Directors has determined that the adoption of the Underwriting Procedures is in the best interests of the Corporation;

NOW, THEREFORE, BE IT:

RESOLVED, that the Underwriting Procedures are hereby approved in all respects by the Board of Directors; and it is further

RESOLVED, that the President, Secretary, Treasurer, any Vice President, Chief Financial Officer or General Counsel of the Corporation (each a “Principal Officer”), are authorized, empowered and directed to take any and all action necessary to effectuate the purpose and intent of the foregoing resolutions, including, without limitation, (i) the execution and delivery on behalf of the Corporation of any agreements, documents and instruments, and the performance by the Corporation thereunder, as each of them shall determine, in his/her exclusive and reasonable judgment, to be necessary, appropriate or advisable, and (ii) the consummation of the transactions contemplated hereby and the performance by the Corporation as required hereunder, as each of them shall determine, in his/her exclusive and reasonable judgment, to be necessary, appropriate or advisable, each such determination pursuant to the immediately preceding clauses (i) and (ii) to be conclusively evidenced by the taking of any such action by any officer of the Corporation and each such determination is hereby fully and completely approved and adopted as the valid action of and by the Corporation approved in all respects by the Board of Directors; and it is further

RESOLVED, that all acts and deeds heretofore done by any officer of the Corporation for and on behalf of the Corporation in developing, acknowledging or implementing the Underwriting Procedures or performing any of the transactions contemplated thereby or in carrying out the terms and intentions of these resolutions, are hereby ratified, approved and confirmed in all respects.

* * *

Exhibit A

Procedures for Financial Diligence, Analysis and Considerations

[Attached]

Empire State New Market Corporation Procedures for Financial Diligence, Analysis and Considerations

Before requesting approval of a potential investment by ESNMC's Project Review Committee and Governing Board and the ESD Governing Board, ESNMC's staff will perform a detailed financial analysis that would include the following, as may be relevant to each particular project:

1. **QALICB Financial Considerations:** To analyze the QALICB's financial viability, evaluate sources and uses and Operating Diligence (see below) to initially estimate if a capital gap exists and to substantiate the level of QLICs needed for a project to move forward, avoid being delayed, or reduced in scope. To analyze the QALICB's financial viability, evaluate the Operating Diligence (see below). For manufacturing projects, review historical sales alongside purchase contracts and market studies to evaluate future sales. For real estate projects, use letters of interest (LOIs), leases and appraisals to evaluate Net Operating Income and Loan to Value. To stress test assumptions, the analysis should verify projections, and run scenarios to evaluate long term financial viability and ensure sufficient cash flow, Net Operating Income, or EBITDA to meet debt service covenants through the term of the QLICs.
2. **Likelihood of Completion:** To assess the likelihood of completion, review the Financing Diligence (see below) such as sources and uses and financing term sheets, and Real Estate Diligence (see below) to make sure a project has sufficient funding and contingency to confirm that it can be completed on time and budget according to the plans and specs. In addition, review general contractor qualifications and/or contracts to ensure the GC has the necessary experience with similar projects.

For new construction projects a hard and soft cost contingency should be set to 5% of hard and soft costs respectively. For projects that include rehabilitation, a hard cost contingency should be set to 10% of hard costs related to the cost of the rehabilitation. These levels may be modified depending on if any of the work is complete, the strength of the guarantor, experience with similar projects, particularly historic rehabilitation projects if relevant, and other factors determined by the staff.

3. **Management and Sponsor Strength:** Review resumes and bios of sponsors, key management, and advisors to ensure they have enough relevant industry knowledge and experience to complete and operate a project or business. Review borrower, sponsor, and guarantor financials, for the ability to inject capital if needed to complete a project or service debt. Reach out to Advisory Board members and ESD staff in regional offices for additional information about the project sponsor and key project players.
4. **Market Demand:** Analysis for market demand is industry specific. For real estate projects, review letters of intent (LOIs) and leases supplemented by market studies, appraisals or broker letter/reports, and/or information in annual regional plans to evaluate and demonstrate demand or leasing potential. Preleasing requirements should be set on a project by project basis depending on the guarantor's track record and financial capacity, flexibility for smaller tenants to sign leases closer to construction completion, the level of required debt service, and any other financial considerations specific to the project. For operating businesses, review sales contracts, market studies, borrower/sponsor/industry sales history, letters of interest/support, and similar documents that demonstrate demand for the company's products.

To complete the analyses described above, ESNMC staff will review the following documents and any others that are necessary to ensure project completion and ongoing financial feasibility:

1. Financing Diligence
 - a. sources & uses
 - b. financing term sheets
 - c. sponsor and guarantor financial statements
 - d. resumes/bios of sponsors, key management, and advisors
 - e. equipment or inventory contracts or Purchase Orders if these are in the budget
2. Operating Diligence
 - a. 7+ year financial projections
 - b. tenant leases and letters of interest (LOIs) for real estate projects
 - c. customer sales and vendor supply contracts for operating businesses
 - d. business plans and market studies
 - e. regional or similar plans
 - f. borrower financials, audits preferred, for existing businesses
3. Real Estate Diligence
 - a. purchase and sale agreement
 - b. construction budget with a trade cost breakdown
 - c. environmental and appraisal reports
 - d. zoning approvals and building permits
 - e. 3rd party engineer Plan and Cost Reports that analyze plans, GC and architecture contracts, and project schedules

Item II. A.



FOR CONSIDERATION

December 18, 2023

TO: The Directors

FROM: Jonevan Hornsby

SUBJECT: Accounting Services

RE: Authorization to Enter into Contract to Provide Accounting Services to the Corporation and to Take Related Actions

CONTRACT NEED AND JUSTIFICATION

I. Contract Summary

Contractor: CohnReznick LLP ("CohnReznick" or the "Firm")

Scope of Services: Provide accounting services to Empire State New Market Corporation ("ESNMC" or the "Corporation") in connection with ESNMC's current allocation and potential future allocation of federal New Markets Tax Credits ("NMTC"), and deployment thereof.

Contract Term: Four (4) Years – January 1, 2024 to December 31, 2027 (may be extended to December 31, 2028)

Contract Amount: Not to exceed \$500,000

Funding Source(s): ESNMC fees and operating funds

II. Background

ESNMC requires accountants experienced in the NMTC program in order to operate its program.

III. Contractor Selection Process

On September 5, 2023, ESNMC issued a Request for Proposals ("RFP") to solicit proposals for NMTC accounting services. The RFP was posted on the Empire State Development website. Additionally, a target was set for 30% of the contract amount to be awarded to qualified minority- and women-owned business enterprises ("MWBEs"). Responses were due October 11, 2023. Responses were received from one accounting firm, CohnReznick.

Staff therefore recommends that the contract be awarded to CohnReznick, under the terms provided below.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has; a) considered proposed contractor's ability to perform the services provided for in the proposed contract; and b) consulted the list of offerors determined to be non-responsible bidders and debarred offerors maintained by the New York State Office of General Services. Based on the foregoing, staff considers the proposed contractor to be responsible.

IV. Scope of Work

Staff recommends that CohnReznick be engaged for the following scope of services: (1) provide transactional accounting projections and related opinions; (2) for each transaction, prepare an annual audit and tax return for both the investment fund ("upper tier") and the operating entity ("lower tier") for fiscal years 2024, 2025, 2026, and 2027; (3) prepare an annual audit, and financial statements for ESNMC for fiscal years 2024, 2025, 2026, and 2027; (4) provide NMTC compliance services and administer periodic testing and reporting on NMTC compliance; and (5) provide NMTC asset management services.

V. Contract Term, Price and Funding

- Term: Four (4) years (January 1, 2024 to December 31, 2027); in the event that the services are not satisfactorily or fully complete by December 31, 2027, contract may be extended by the President of ESNMC through December 31, 2028 in order to finalize tasks.
- Pricing:
 - Transaction-specific work:
 - Consulting, structuring and financial projections (funded by NMTC borrowers from closing proceeds): billed hourly at Firm's rates, as follows:

Professional Level	Hourly Rate
Partner/Director	\$625
Senior Manager	\$550
Manager	\$475
Senior Associate	\$385
Associate	\$285

*Per the Firm, the above rates may be adjusted annually as of February 1st.

- Annual audit and tax return for both the investment fund and operating entity, for each transaction: Audit – \$7,500, \$7,800, \$8,100, and \$8,400 for fiscal years 2024, 2025, 2026, and 2027, respectively. Tax Return –

\$2,325, \$2,450, \$2,575, and \$2,700 for fiscal years 2024, 2025, 2026, and 2027, respectively. (Note: all operating entities have a December 31 fiscal year end.)

- Annual audit and tax return for ESNMC, if required: Audit – \$7,500, \$7,800, \$8,100, and \$8,400 for fiscal years 2024, 2025, 2026, and 2027, respectively. Tax Return – \$2,325, \$2,450, \$2,575, and \$2,700 for fiscal years 2024, 2025, 2026, and 2027, respectively. To be determined based on need and amount of activity at ESNMC level.
 - Compliance services: \$17,500, \$18,025, \$18,565, and \$19,125 for fiscal years 2024, 2025, 2026, and 2027, respectively.
 - Asset management services (per QALICB): \$4,500, \$4,650, \$4,750, and \$5,000 for fiscal years 2024, 2025, 2026, and 2027, respectively.
- Maximum Contract Amount: \$500,000.
 - Funding Source: ESNMC fees and operating funds.

VI. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises (MWBEs) in the performance of ESD projects and procurements. The ESD Office of Contractor and Supplier Diversity has reviewed the project and has determined that there exists no potential for MWBE participation. As such, participation goals will not be established or required for this project.

VII. Environmental Review

The requested authorization to enter into a contract constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

VIII. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed contractor; (2) authorize the Corporation to enter into a contract with CohnReznick LLP for an amount not to exceed \$500,000.

IX. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

X. Attachments

Resolutions

December 18, 2023

EMPIRE STATE NEW MARKET CORPORATION – Accounting Services - Authorization to Enter into a Contract to Provide Accounting Services to the Corporation and to Take Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds CohnReznick LLP to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with CohnReznick LLP in an amount not to exceed five hundred thousand dollars (\$500,000) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation or his designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

* * *

Item II. B.



FOR CONSIDERATION

December 18, 2023

TO: The Directors

FROM: Jonevan Hornsby

SUBJECT: Consulting Services

RE: Authorization to Enter into Contract to Provide Consulting Services to the Corporation and to Take Related Actions

CONTRACT NEED AND JUSTIFICATION

I. Contract Summary

Contractor: Rise Community Capital LLC ("Rise" or the "Firm")

Scope of Services: Provide consulting services to Empire State New Market Corporation ("ESNMC" or the "Corporation") in connection with ESNMC's current allocations and potential future allocations of federal New Markets Tax Credits ("NMTC"), and deployment thereof.

Contract Term: Four (4) Years – January 1, 2024 to December 31, 2027 (may be extended to June 30, 2030)

Contract Amount: Not to exceed \$2,000,000

Funding Source(s): ESNMC fees and operating funds

II. Background

ESNMC requires consultants experienced in the NMTC program in order to operate its program.

III. Contractor Selection Process

On September 5, 2023, ESNMC issued a Request for Proposals ("RFP") to solicit proposals for NMTC consulting services. The RFP was posted on the Empire State Development website. Responses were due October 11, 2023. Responses were received from one consulting firm, Rise. Staff therefore recommends that Rise be awarded the contract, under the terms provided below.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has; a) considered proposed contractor's ability to perform the services provided for in the proposed contract; and b) consulted the list of offerors determined to be non-responsible bidders and debarred offerors maintained by the New York State Office of General Services. Based on the foregoing, staff considers the proposed contractor to be responsible.

IV. Scope of Work

Staff recommends that Rise be engaged for the following scope of services: (1) assist ESNMC in preparing an application for a future NMTC allocation in 2023, 2024, 2025, and/or 2026; (2) screen potential NMTC transactions for eligibility; (3) identify potential NMTC investors and debt providers, and structure NMTC transactions accordingly; (4) close NMTC transactions with the support of ESNMC/ESD staff; (5) assist ESNMC in the compliance of all terms, covenants, and agreements contained in the NMTC Program Income Tax Regulations, all Allocation Agreements, and any requirements issued by the CDFI Fund in connection with ESNMC's NMTC Program; and (6) on an ongoing basis, provide suggestions for the successful continuation of an NMTC program and suggestions to improve ESNMC's chances of receiving future NMTC allocations.

V. Contract Term, Price and Funding

- Term: Four (4) years (January 1, 2024 to December 31, 2027); in the event that services are not satisfactorily or fully complete or any allocations awarded with the Firm's assistance are not fully deployed by December 31, 2027, contract may be extended by the President of ESNMC through June 30, 2030 in order to finalize tasks.

Deployment services can take up to 30 months after signing an NMTC allocation agreement with the Community Development Financial Institutions Fund.

- Pricing:
 - Prepare ESNMC's 2023, 2024, 2025, and/or 2026 Allocation Applications:

2023, 2024, 2025, and/or 2026 Applications
Upfront Fee: \$65,000
Success Fee: 0.30% of each NMTC award amount, paid if and when each year's allocation is received.
 - Application Deployment (screening, structuring, and closing transactions; and general consulting assistance): 30% of ESNMC's Closing/Sub-Allocation Fee. For example, assuming ESNMC earns a Closing/Sub-Allocation Fee of 4% of the total Qualified Equity Investment, the Firm's share would be 1.2%, paid when project transactions close (funded by NMTC borrowers from closing proceeds).

- Asset Management and/or Compliance: Fee for asset management and compliance may be based on a percentage of ESNMC's asset management and compliance fee (up to 30 basis points of the fee ESNMC receives).
- Out-of-Pocket Expenses (in accordance with the Corporation's billing policy as outlined in Schedule A): Reimbursement for any approved out-of-pocket expenses incurred to conduct meetings in Upstate NY / Western NY regions in order to strengthen ESNMC's pipeline, ESNMC's overall stakeholder engagement, and refinement of ESNMC's financing / business strategies. All expenses must be approved in advance.
- Hourly Services: Firm's hourly rates are as follows:

Professional Level	Hourly Rate
Partner	\$450
Managing Director (or equivalent)	\$350
Manager (or equivalent)	\$220
Associate (or equivalent)	\$150

- Maximum Contract Amount: \$2,000,000.
- Funding Source: ESNMC fees and operating funds.

VI. Non-Discrimination and Contractor & Supplier Diversity

ESD/ESNMC's Non-discrimination and Contractor & Supplier Diversity policies will apply to this Project. Rise shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprise (MWBs) for any contractual opportunities generated in connection with this contract and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 30% related to the total value of this contract's funding.

VII. Environmental Review

The requested authorization to enter into a contract constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

VIII. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed contractor; (2) authorize the Corporation to enter into a contract with Rise Community Capital LLC for an amount not to exceed \$2,000,000.

IX. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

X. Attachments

Resolutions

December 18, 2023

EMPIRE STATE NEW MARKET CORPORATION – Consulting Services - Authorization to Enter into a Contract to Provide Consulting Services to the Corporation and to Take Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Rise Community Capital LLC to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Rise Community Capital LLC in an amount not to exceed two million dollars (\$2,000,000) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation or his designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

* * *

Item II. C.



FOR CONSIDERATION

December 18, 2023

TO: The Directors

FROM: Jonevan Hornsby

SUBJECT: Olean (Western New York Region – Cattaraugus County) – New Markets Tax Credit Sub-Allocation to provide financing to equip Cimolai-HY's new manufacturing facility

REQUEST FOR: Authorization to Adopt the Proposed General Project Plan ("GPP"); Sub-Allocate New Markets Tax Credits ("NMTCs") to an Empire State New Market Corporation ("ESNMC") Subsidiary; Close the NMTC Transaction Take all Related Actions

General Project Plan

I. Project Summary

Project Sponsor: The sponsor is Related Companies, L.P. (the "Sponsor" or "Related").

Borrower: The borrower will be Cimolai-HY LLC, the steel fabrication manufacturing operating entity at the Olean facility (the "Borrower"). ESNMC Subsidiary CDE XIV, LLC, a New York limited liability company, or another subsidiary of ESNMC (the "Subsidiary CDE"), is expected to make loans, which will qualify as Qualified Low Income Community Investments ("QLICs", each a "QLICI") as defined under the NMTC program (further described below) to the Borrower.

ESNMC* Request: Approval (1) to allocate up to \$15,000,000 in federal NMTCs for the purpose of enabling the Subsidiary CDE to make loans to the Borrower to finance the project, and (2) to delegate authority to the President of ESNMC and his designee(s) to take any and all actions with respect to such allocation of NMTCs, the final terms of all transaction documents, and closing the transaction.

**ESNMC is a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development ("ESD").*

Project Location: The project is located at 500 Paul Clark Drive, Olean, NY 14760.

Proposed Project: The Subsidiary CDE will make loans to the Borrower to purchase equipment and related costs, so it can re-open a shuttered manufacturing site where they will manufacture fabricated steel (the "Project"). The costs

financed by the QLICs will qualify as "Non-Real Estate" expenses for NMTC program purposes.

Project Type: This Project will create jobs in this non-metropolitan low-income community, and allow the Borrower to meet its production goals. This investment addresses ESNMC's goal of (i) making investments in manufacturing companies to create quality jobs, (ii) providing QLICs in Non-Metropolitan areas, and (iii) providing capital for Non-Real Estate purposes.

Alignment with Priorities: This investment aligns with the following ESNMC priorities and focus areas in the calendar year 2022s NMTC allocation application submitted to the CDFI Fund (as defined below) and the related Allocation (as defined below) received by ESNMC.

- (1) Invest in projects that create quality jobs by growing the manufacturing base, particularly in small upstate LICs: This investment allows ESNMC to help a growing manufacturing business to create approximately 250 quality manufacturing jobs in a low-income, upstate community.
- (2) Make loans in Non-Metropolitan areas: These loans will be made to a company located in a Non-Metropolitan location.
- (3) Make loans for Non-Real Estate purposes: These loans will be used to purchase equipment for this manufacturing facility.
- (4) Highly Distressed Area: The Project is located in the City of Olean's census tract #36009961700 corresponding to the street address of 500 Paul Clark Drive, Olean, NY 14760. This census tract qualifies as a Low-Income Community and an area of severe distress based on the 2015 census data, because the census tract meets the following criteria:
 - (a) It has a family median income of 44.17%, which is lower than the minimum threshold of 80%.
 - (b) It has a Poverty Rate of 42.30%, which is above the minimum threshold of 20%.
 - (c) It has an Unemployment Rate of 17.80%, 2.14 times the national average.
 - (d) The census tract meets the higher distress criteria, because it is located in a Non-Metropolitan County.

II. Project Cost and Financing Sources

The table below outlines approximate amounts of the NMTC Allocation targeted to the Borrower and the expected project uses and financing sources, which will be finalized, reviewed and approved by ESNMC prior to closing. The sources include approximately \$14.4 million in QLICI loans from ESNMC and \$14.4 million in QLICI Loans from Mascoma Community Development (MCD), a leaseback payment from Siemens, incentives and grants from ESD and Cattaraugus County that will be bridged by Sponsor equity, and Sponsor equity. If any of these potential sources are not available for closing, the Sponsor will bridge them with equity.

Target NMTC Allocation	\$30,000,000
Target ESNMC NMTC Allocation	\$15,000,000

Project Sources	Total	%
HY Steel LLC Contribution	\$19,865,847	38%
Incentives/Grants	\$5,000,000	7%
Siemens Leaseback Payment	\$597,425	1%
ESNMC A QLICI	\$10,381,200	19%
ESNMC B QLICI ⁽¹⁾	\$4,018,800	7%
MCD A QLICI	\$10,456,200	19%
MCD B QLICI	\$4,243,800	8%
Total Sources	\$54,563,272	100%

Project Uses	Total	%
Equipment	\$27,454,516	50%
Working Capital	\$13,532,610	25%
Land/Building Acquisition	\$8,021,686	15%
Building Improvements	\$3,712,612	7%
Consultants	\$629,960	1%
NMTC Closing Costs and Reserves	\$610,490	1%
NMTC Reserves ⁽²⁾	\$601,398	1%
Total Uses	\$54,563,272	100%

Notes

(1) These funds are ESNMC's QLICIs are indirectly sourced from the NMTC Investor Equity and Sponsor Equity.

(2) The NMTC Closing Reserves includes ESNMC's annual Asset Management Fees for 7 years, annual Audit & Tax Expense for 8 years, and its Exit Fee

III. Project Description

A. Borrower

Industry: The Borrower is a steel fabrication manufacturing company.

Sponsor History: Related Companies, L.P. is leading real estate firm that has developed notable projects such as the Hudson Yards Redevelopment Project in New York City. The Sponsor manages, develops, and holds/sells real estate. The

company also owns certain manufacturing, engineering and construction related businesses. For example, it owns a manufacturing curtain wall systems manufacturing and design services company.

Ownership: The Project Sponsor is the 90% owner of Related Construction HoldCo LLC, along with 10% ownership by Emad Lotfalla, the Executive Vice President of Design and Construction for Related. Related Construction HoldCo LLC ("HoldCo") wholly-owns HY Steel LLC, which wholly-owns Cimolai-HY LLC. The Borrower for NMTC purposes will be Cimolai-HY LLC, the operating entity doing the Project and operating the site and a Portion of the Business of HoldCo since it fully owns the Borrower.

Market: Located in Olean, NY, which is in the Western New York Region, Cimolai-HY LLC manufactures fabricated steel for use in building and large infrastructure projects. The Project will allow the Borrower to equip the facilities for structural steel fabrication, which will be used in building and large infrastructure projects, including offshore wind development and other green energy projects.

ESD Involvement: New York State legislation requires ESD to select and prioritize projects demonstrating certain goals or benefits and approve the Project as an ESD project. In accordance therewith, on January 18, 2024 the ESD board of directors will be requested to separately approve the Project.

Past ESD Support: ESD is expected to provide \$5 million in Excelsior tax credits to the Project.

B. The Project

Activity As noted above, the Subsidiary CDE will make QLICI loans to the Borrower to equip a steel fabrication manufacturing facility in Olean, NY.

Results: The following are important outcomes that are expected to be achieved:
Estimated Job Creation: The Project is expected to create 250 permanent full-time jobs.

Quality Jobs/Benefits Offered to Employees: It is anticipated that 250 of the total permanent jobs created (or 100% of the total jobs) will be paid an average of \$29/hr, which is significantly above the Cattaraugus County living wage of \$15.18/hr and will receive comprehensive benefits including medical, dental and vision insurance, paid time off, retirement plans, life insurance, and disability.

Job Accessibility to the Low-Income Community: The Project is expected to create 234 Accessible permanent FTE jobs (or 94% of total) that are available to people without a college degree or that face other barriers to

employment (prior criminal record, veterans, workers with disabilities, non-native English speaking). The Project will work with local trade schools and community colleges such as Jamestown Community College to provide on-the-job training for hired employees in order to help sustain career development and growth.

Community Support: The Project has significant local, county, and state support including \$5 million in Excelsior tax credits from ESD, a \$2 million grant from Cattaraugus County, and a loan from Cattaraugus County. The project also fulfills longstanding regional goals of developing the region's workforce and industry in the manufacturing sector. The region's industrial base is a key tradeable sector for investment, as these jobs offer low barriers of entry, potential high wages, and low job turnover. Additionally, as the Facility will manufacture the structural steel needed in infrastructure projects such as off-shore wind and green energy, it aligns with New York's goals of a transition to green energy sources and driving supply chain localization.

Borrower Contact: John Kelly
Email: John.Kelly@related.com

Project Team:	Origination	Jonevan Hornsby
	Project Management	Brendan Healey
	Contractor & Supplier Diversity	Denise Ross
	Finance	Jonevan Hornsby
	Environmental	Soo Kang

Statutory Basis
And Findings:

Section 45D of the Internal Revenue Code, Section 10 (g) and Sections 12 and 16 (2) of the New York State Urban Development Corporation Act of 1968, as amended (the "UDC Act"). As noted below, the NMTC program, enacted in 2000, offers a non-refundable tax credit intended to encourage private capital investment in low-income communities. The Project will comply with all applicable NMTC program requirements. ESD is required to approve the Project (and is scheduled to do so at a meeting to be held on January 18, 2024) and ESNMC will comply with applicable federal tax laws and consummate the transaction. ESNMC is making certain findings as part of its approval of the Project.

IV. NMTC Program Background and ESNMC Role

The NMTC program, enacted in 2000, offers a non-refundable tax credit intended to encourage private capital investment in low-income communities. The U.S. Department of the Treasury's Community Development Financial Institutions Fund (the "CDFI Fund") allocates NMTCs under a competitive application process. Investors who make qualified equity investments ("QEIs") in community development entities ("CDEs") reduce their federal income tax liability by claiming the NMTC.

CDEs, such as ESNMC, the CDE that is controlled by ESD, apply to the CDFI Fund for an allocation of NMTCs. After an award of NMTC allocation, the CDE uses subsidiary CDEs to attract private equity investors who make QEIs in the subsidiary CDEs in order to claim the NMTCs. The subsidiary CDE then makes loans or equity investments in qualified businesses that are located in low-income communities. These loans and/or equity investments are made on better rates and terms than market.

The tax credit value is 39% of the cost of the QEI and is claimed over a seven-year credit allowance period. In each of the first three years, the investor receives a credit equal to 5% of the total amount paid for the stock or capital interest in the subsidiary CDE at the time of purchase. For the final four years, the value of the credit is 6% annually. Investors must retain their interest in a QEI throughout the seven-year period.

By federal law, any CDE must be a domestic corporation or partnership that must go through a certification process to obtain its status. Partnerships and limited liability companies ("LLCs") (that are treated as partnerships for federal income tax purposes) are the preferred subsidiary to structure NMTC projects. ESNMC has created certified subsidiary CDEs as LLCs and has sub-allocated and will sub-allocate its NMTCs to one of these LLCs for each project.

Through the NMTC program, \$76 billion in NMTCs have been awarded to CDEs across the country since inception.

ESNMC received its first allocation of NMTCs in 2009 in the amount of \$30 million. This initial allocation was deployed in two NMTC projects. ESNMC received a second allocation in the amount of \$55 million in the 2015-2016 round of the NMTC program. ESNMC deployed all of this allocation in twelve projects. ESNMC received a third allocation in the amount of \$45 million for the 2021 round, and a fourth allocation in the amount of \$50 million for the 2022 round of the NMTC program. ESNMC has used \$9 million to fund the GLOW YMCA project, and \$10.5 million to make small QLICs to 3 Bogopa grocery stores, both of which sub-allocations were from the 2021 award. ESNMC is in the process of closing \$10 million from the 2021 award for one additional investment, the mixed-use Flanigan Square project.

V. Overall Structure of NMTC Project Transaction

The Project will be structured as follows: USBCDC, will make an equity investment in the approximate amount of \$9,243,000 (the "NMTC Equity") in a special purpose fund (the "Fund")

wholly-owned by the NMTC Investor or another investor and formed for the purpose of this transaction. A newly formed special purpose entity will be the Leverage Lender for this transaction and will make an approximate \$20,837,400 leverage loan to the Fund (the "Fund Loan").

The proceeds of the Fund Loan and the NMTC Equity will be combined by the Fund and used to make a QEI in the amount of \$15,000,000 in the Subsidiary CDE. ESNMC will sub-allocate up to \$15,000,000 of NMTC allocation authority to its Subsidiary CDE. ESNMC's Subsidiary CDE will use the proceeds of the QEI from the Fund to make loans to the Borrower in an aggregate amount equal to approximately \$14,400,000. ESNMC's Subsidiary CDE will pay a fee to ESNMC totaling approximately \$600,000.

The balance of funding required by the Borrower will come from ESD's Excelsior Tax Credits, a loan from Cattaraugus County, funds from the Siemens lease payments, and Sponsor Equity as described above.

USBCDC, Chase or another investor will require the Subsidiary CDE and its managing member, ESNMC, to indemnify the NMTC Investor from the recapture or disallowance of the NMTC caused by acts or omissions of the Subsidiary CDE and/or ESNMC, so that the NMTC Investor will be made whole (subject to any caps that may be negotiated) in respect to its investment even if the NMTCs are lost or recaptured.

Notwithstanding the foregoing, the structure of the overall transaction and each project is still under review and discussion and may be affected by receipt of additional documentation and further evaluation by the transaction parties.

VI. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Articles 15-A and 17-B, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises (MWBES) and service disabled veteran owned businesses (SDVOBs) in the performance of ESD projects. Accordingly, ESD's Non-Discrimination and Contractor & Supplier Diversity policy will apply to the project. No specific MWBE or SDVOB participation goals shall be required of this project, however, the sponsor shall adhere to ESD's Non-Discrimination and Equal Employment Opportunity ("EEO") policy.

VII. Environmental Review

ESD staff on behalf of ESNMC has determined that the project constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the project.

VIII. Requested Actions

The Directors are being asked to adopt, subject to the requirements of Section 16(2) of the UDC Act, the herein described GPP, and to make a sub-allocation of up to Fifteen Million Dollars (\$15,000,000) from the Allocation for the purposes set forth in the GPP. The Directors are also being asked to delegate to one or more authorized officers of ESNMC, acting in its own capacity, or as managing member of the Subsidiary CDE, the authority to determine the terms of the NMTC transaction documents and to execute such NMTC transaction documents on behalf of ESNMC and the Subsidiary CDE in connection with the closing of the NMTC transaction.

IX. Additional Submissions to Directors

Resolutions

New York State Map

EMPIRE STATE NEW MARKET CORPORATION – New Markets Tax Credit Sub-Allocation to provide financing for the purchase of equipment for Cimolai-HY LLC’s steel fabrication manufacturing facilities – Authorization to Adopt the Proposed General Project Plan (the “GPP”); Authorization to Sub-Allocate New Markets Tax Credits (“NMTCs”); Perform Certain Acts in Connection with the Sub-Allocation of NMTCs to an ESNMC Subsidiary CDE; Close the NMTC Transaction and Take All Related Actions

WHEREAS, Empire State New Market Corporation, a New York corporation (the “Corporation”), has been certified by the Community Development Financial Institutions Fund (the “CDFI Fund”) as a “qualified community development entity” (a “CDE”), as such term is defined in the Internal Revenue Code of 1986, as amended (the “Code”), the Treasury Regulations and the related guidance, and the Corporation has entered into or will enter into an Allocation Agreement (the “Allocation Agreement”), with the CDFI Fund in connection with a a calendar year 2022 allocation of NMTCs under Section 45D of the Code in the amount of \$50,000,000 (the “Allocation”);

WHEREAS, the Corporation desires to sub-allocate to ESNMC Subsidiary CDE XIV, LLC, a New York limited liability company, or another subsidiary CDE of the Corporation (the “Subsidiary CDE”), up to \$15,000,000 in NMTC authority from the Corporation's Allocation (the “Sub-Allocation”) in connection with the proposed investment to Cimolai-HY LLC (the “Borrower”) to finance equipment purchases for the steel fabrication manufacturing facilities in Olean, New York (the “Project”) as described in the GPP;

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the UDC Act, the proposed GPP for the Project submitted to this meeting, together with such changes therein as the President of the Corporation or his designee(s) may deem appropriate, a copy of which GPP, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, the President of the Corporation or his designee(s) be, and each of them hereby is, authorized to cause the Corporation to make to the Subsidiary CDE, the Sub-Allocation for the purposes of making NMTC financing available to the Project described in the GPP, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President of the Corporation or his designee(s) may deem appropriate, and be it further

RESOLVED, that pursuant to Section 10(g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the location of the Project; and be it further

RESOLVED, that the President of the Corporation or his designee(s) be, subsequent to the making of the Sub-Allocation, and each of them hereby is, authorized to cause the Corporation to take

such actions and make such modifications to the terms of the Sub-Allocation as he or she may deem necessary or appropriate in the administration of the Allocation; and be it further

RESOLVED, that the President or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation acting in its own capacity, or as managing member of the Subsidiary CDE, to negotiate, issue, execute and deliver any and all transaction documents and instruments, including but not limited to, operating agreement(s), loan and security agreements, indemnity agreement(s), fee agreements, asset management agreements, bank accounts, account control agreements, disbursement agreements, and any other security agreements, financing statements, notices, requests, demands, directions, consents, approvals, waivers, acceptances, appointments, applications, certificates, agreements, supplements, amendments, further assurances or other instruments or communications (collectively, the "Transaction Documents"), and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions, including such modifications to the terms of the transaction as he or she may deem necessary or appropriate and reasonably consistent with the GPP. Any actions previously taken by the Corporation in furtherance of the GPP are hereby ratified and approved.

* * *

Cimolai-HY

Olean

Cattaraugus County

